

**A Programme Evaluation of Vancouver Aboriginal
Transformative Justice Services Society (VATJSS)**

Ted Palys, PhD

Simon Fraser University

11 June 2014

Table of Contents

Contents

Executive Summary.....	4
Canada’s Aboriginal Justice Strategy	9
VATJSS: A Brief History.....	10
Data Sources for the Evaluation	12
Findings	13
Cases	13
Clients.....	15
VATJSS Programs and Activities	19
It’s the Person As Much As the Crime.....	19
The Community Forum	20
Responding to Community Need.....	21
Housing and Homelessness	22
Advocacy	23
Respectful Relationships/Sacred Connections	23
Substance Abuse Management (SAM)	25
Child Apprehension.....	25
And More	26
The Door is Always Open	27
Evaluating Program Effectiveness.....	27
Aspirations	31
VATJSS in a Canadian Justice System Context	33
An Early Partnership	33
The Changing Landscape.....	34
Implications.....	34
Discussion and Conclusions	37
Past.....	37
Present	39

Lack of Consultation.....	39
All the Bells and Whistles.....	40
A Need to Renegotiate Umbrella Agreements	41
Future.....	42
Recommendations	43
For VATJSS.....	44
For AJS.....	44

Executive Summary

The current project complements a national evaluation, published in 2011,¹ that addressed the core issues of the relevance and performance of the AJS. That study showed that AJS programs reduced recidivism, engendered cost savings, and promoted community development both within Indigenous communities and between Aboriginal and non-Aboriginal people in the broader community. The current study focussed on one Aboriginal justice program (Vancouver Aboriginal Transformative Justice Services (VATJSS)) in a major Canadian city (Vancouver) to better understand life “on the ground” for an AJS-funded organization. The study was guided by questions about how the organization came about (the past), how it achieves its objectives and evaluates its success (the present), and what those involved aspire to do with and for their community if they have the opportunity and resources to do so (the future).

Data Sources

A comprehensive database was constructed that compiled information about 976 clients who were entered into the organization’s database from VATJSS’s inception to the end of calendar year 2013. Interviews also were conducted with the former and current Executive Directors of the organization and all current employees who were willing to participate. This was further supplemented with secondary data bases that allowed for a cross-check on some of the information gathered explicitly for this study.

A Brief History

VATJSS became operational at the beginning of 2000 after almost two years of consultation and discussion. The process brought together members of Vancouver’s Aboriginal community who provided justice-related services – the “Aboriginal caucus” – and a Steering Committee comprising some members of the caucus as well as federal, provincial and municipal authorities involved in funding and/or developing protocol agreements by which members of the Aboriginal community would be referred to the fledgling organization. VATJSS was designed after extensive consultation with Elders groups, community agencies and the broader Aboriginal Community (e.g., through information nights at the Aboriginal Friendship Centre) and the three other urban Aboriginal justice programs existing at that time (in Toronto, Winnipeg and Thunder Bay). For what was portrayed as largely a matter of convenience, VATJSS came into existence as an “Alternative Measures” program that would receive Crown referrals of “Aboriginal” people accused of a limited range of charges.

Referred individuals had to be willing to take responsibility for their actions and to participate in a community forum – a circle that would include the offender, victim (where one existed and if appropriate), an Elder, two community members, a justice coordinator (who would facilitate the circle), and other relevant individuals (e.g., family members, support persons). The objective was to understand the personal and contextual factors that contributed to the generation of the trouble that had brought the individual to the circle, and to develop a

¹ <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/11/ajs-sja/index.html> (Hereafter “AJS Evaluation”).

“healing plan” that would set the individual on a better life course. The understanding at the time was that this was the first step in what would be an evolving relationship, with VATJS taking on ever-greater responsibility as the organization matured, personal and physical infrastructure was developed, and members of the community showed confidence in the program and would support its further development.²

Organization Growth

Since those initial days, VATJSS, along with other programs in the country that are funded all or in part through AJS have matured and a substantial infrastructure – both in human and physical terms – has been built. While referrals from Provincial authorities and community forums continue to be a VATJSS mainstay, the organization has expanded in several directions. There have been three major sources to this expansion: (1) issues arising in community forums that needed to be addressed (e.g., housing); (2) infrastructure development arising from opportunities facilitated by AJS personnel (e.g., the development of the Respectful Relationships/Sacred Connections program); and (3) issues raised by community self-referrals (e.g., mediation in child protection cases).

Program Effectiveness

Numerous indicators affirm that VATJSS is very successful in what it does. These include:

- high rates of complete (82%) and partial (10 %) completion across all types of healing/action plans;
- increasing numbers of self-referrals;
- clients who return to avail themselves of program services even after their formal engagement with the program has ended;
- positive feedback from community partners;
- positive outcomes on program-specific indicators (e.g., housing and homelessness) that meet or exceed funding authority definitions of success;
- positive feedback from community members in public forums

While the national study of AJS programs included an examination of recidivism data and showed that AJS-funded programs were more effective than a comparison group, such data were not available to us for this study. VATJSS personnel hope that this information will be available for any future evaluations they might conduct.

Impediments to Growth

There have been three significant impediments to VATJSS growth.

² For more detailed histories of development of VATJSS, see Ted Palys (1999). Vancouver’s Aboriginal Restorative Justice Program: The Challenges Ahead. *Aboriginal Justice Bulletin*, 3(1), 2-3, at 3. Online at <http://www.sfu.ca/~palys/VATJS1999.pdf> and Tammy T’at’usayalthim Dorward (2005). “The Role of ‘Community’ In the Design and Development of Vancouver Aboriginal Transformative Justice Services.” MA Thesis: SFU School of Criminology. Online at <http://ir.lib.sfu.ca/handle/1892/724>.

1. Obsolescence of Original Protocol Agreements

As VATJSS has grown and matured, the justice system in BC has evolved without any particular regard for VATJSS. First the Federal Drug Court, then the downtown Community Court, and then the First Nations Court in New Westminster – all of whose operations had implications for VATJSS and the community it served – were created. Each represented an opportunity to engage VATJSS in partnership and thereby support Aboriginal justice and make efficient use of resources. In the absence of consultation and the resulting failure to develop new protocol agreements for each development, the original protocol agreements under which VATJSS operated have become obsolete.

2. Subject to Justice System Caprice

The development of the Vancouver Downtown Community Court (DCC) offers an interesting comparison of the fate of two different organizations in relation to the Provincial Court at 222 Main. VATJSS does not have a fixed jurisdiction. Its original protocol agreement allowed for referrals from Provincial Court at the behest of the Crown. When the DCC was created, its clientele was a subset of the Provincial Court case load, but the DCC did not depend on Crown discretion for its referrals. Instead, the DCC's jurisdiction was for a fixed range of offenses in a fixed territory. It is only when DCC deems a referral inappropriate that the individual is referred back to the Provincial Court. In contrast, VATJSS's referrals are at the discretion of various provincial authorities – the Crown, first at Provincial Court and now also at the DCC; the police; probation authorities, and so on. This creates the situation where VATJSS's referrals depend on the attitudes and preferences of individual justice system personnel. As employees in the criminal justice agencies with whom VATJSS interacts change, any trust and rapport built with the previous individual in that position is lost, and VATJSS, without a Steering Committee and Aboriginal Caucus and amended protocol agreement, is placed back at square one and required to educate the new incumbent, who may or may not have the same commitment to Aboriginal justice as their predecessor.

3. Inconsistent and Uncertain Funding

Thanks to more than two decades of support from AJS and clear Aboriginal interest as evidenced by the proliferation of programs across the country, a personal and physical infrastructure is now in place. However, the long term commitment that would allow a new generation of Aboriginal youth to envision themselves having a career in the justice area does not yet exist. Funding over the last few years has been quite precarious, with AJS programs on some occasions wondering whether their funding would exist even a month or two down the road. The employees of VATJSS are highly motivated individuals who are contributing to a community resource they believe is important, but they also share the same dreams as the rest of us – to secure a home; to have and raise children; to further upgrade their professional expertise and accreditation. This makes maintaining staff at justice programs such as VATJSS a challenge over the longer term when the pragmatics of life intervene and other more stable options present themselves, and inhibits the longer term planning and evaluation that is necessary for organization development. We can look back now to see how VATJSS has existed and evolved over 14 years, but should recognize this has been accomplished knowing the

organization’s potential horizon was always anywhere from a month to a year or two away. The mainstream justice system could not evolve to its full potential under such a cloud of uncertainty; it would seem unfair and inequitable to expect Aboriginal justice systems to do so.

Aspirations

All the indicators examined suggest that VATJSS is an effective and capable organization that is achieving its mandated program goals of providing a culturally appropriate alternative to the mainstream justice system and building a healthier community in the process. At this time the organization sees numerous opportunities into which it would like to expand – working on K-files; providing victim services; establishing an Aboriginal probation centre; writing Gladue reports; engaging in housing circles; establishing a child apprehension ombudsperson. Funding and suitable protocol agreements are the two main impediments to undertaking those initiatives.

Recommendations

The AJS offered a way for Aboriginal people “to contribute to decreasing the rates of crime and victimization in Aboriginal communities operating AJS programs; to assist Aboriginal communities to take greater responsibility for justice administration; to provide better and more timely information about community justice programs funded by the AJS; and to reflect and include relevant Aboriginal cultural values in Canadian justice administration.”³

The UN *Declaration on the Rights of Indigenous Peoples* affirms the right of Indigenous peoples to develop legal institutions and juridical systems consistent with their traditions and international human rights standards. Canada has expressed its support for the *Declaration*. More recently, James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples, pointed to the “notable effort” the AJS was playing in providing Aboriginal people with opportunities to develop culturally appropriate alternatives to the mainstream justice system. His report recommended that, “Federal, provincial and aboriginal governments should improve upon their coordination in the delivery of services. Continued efforts should be made to support indigenous-run and culturally appropriate social and judicial services, and to strengthen and expand programs that have already demonstrated successes.”⁴ VATJSS is one of those “demonstrated successes.” On that basis, VATJSS and Canada – via the AJS – are encouraged to consider the recommendations below.

For VATJSS

There are two areas that VATJSS should consider pursuing funding:

- **Expanding Data Management Systems.** The data compilation software that VATJSS currently uses has not changed since the organization began accepting clients in 2000, despite program growth in a number of areas. Future evaluations and ongoing quality assurance activities would be better served by an expanded data base that reflects

³ <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/11/ajs-sja/ajs-sja.pdf> (Hereafter “AJS Statistical Overview”)

⁴ <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en-auversion.pdf>

VATJSS's current range of activity and can have added modules when and if areas of program expansion are implemented.

- **A New Generation of Broad Systematic Community Engagement.** VATJSS's strength and effectiveness has always come from its connection to the community who ultimately defines and guides what they do. In the event AJS were to be open to the recommendations outlined below, it would be appropriate for VATJSS to engage more systematically a broad process of community consultation that parallels the processes that led to its initial development in the late 1990s. If VATJSS is to be released from its Alternative Measures constraints, as the recommendations below suggest, VATJSS will want to formally consult with its community to help define priorities for the organization's future development.

For AJS

The AJS has played a crucial role helping to develop and promote Aboriginal justice and build infrastructure across the country, and the national evaluation of 2010-2011 revealed that, at the national level, these programs reduce recidivism, create cost savings, and promote community development. I encourage Canada via the AJS to take the next steps, which might include the following:

- **Make a long term commitment to Aboriginal justice in Canada.** This would involve at minimum a policy commitment that Aboriginal justice is here to stay. For organizations such as VATJSS, this assurance of funding and existence over the longer term will open up possibilities for longer term commitment to staff and encourage longer term planning for the efficient delivery of justice services as defined by the community.
- **Allow for variation in organization funding.** AJS should consider identifying a small set of projects among mature organizations who have shown they are ready for further expansion – VATJSS certainly being one of these – for more extensive funding on a proposal basis.
- **Negotiate a new generation of protocol agreements involving VATJSS.** This might follow the Steering Committee/Aboriginal Caucus model that created VATJSS, thereby ensuring that all relevant levels of government and the Aboriginal community's interests are represented in the discussions, and hence that implementation of any agreement can be anticipated.
- **Base new protocol agreements on the notion of default Aboriginal jurisdiction.** Any "Aboriginal" person should have access to Aboriginal justice processes; a key condition of any negotiated agreement should be that any Aboriginal individual will go first to an Aboriginal justice program, who may then choose to refer to other agencies if appropriate.
- **Provide funding adequate to the task.** In addition to program-specific funding, as organizations develop, the Vancouver, BC and federal governments should consider supporting the development of an Aboriginal legal centre.

A Programme Evaluation of Vancouver Aboriginal Transformative Justice Services Society (VATJSS)

Ted Palys, PhD⁵

Simon Fraser University

Canada's Aboriginal Justice Strategy

The Department of Justice's Aboriginal Justice Strategy (AJS) has provided funding on a cost-share basis with provincial and territorial governments to support community-proposed Aboriginal justice programming since 1991. The objectives of this funding are:

- to contribute to decreasing the rates of crime and victimization in Aboriginal communities operating AJS programs;
- to assist Aboriginal communities to take greater responsibility for justice administration;
- to provide better and more timely information about community justice programs funded by the AJS; and
- to reflect and include relevant Aboriginal cultural values in Canadian justice administration.⁶

In 2010 and 2011 the Department of Justice Canada undertook a national evaluation addressing the core issues of the relevance and performance of the AJS. The resulting report, published in 2011,⁷ revealed that the programs were achieving a diverse set of targeted objectives. Most broadly, the evaluation concluded AJS-funded programs were providing Aboriginal people/s with access to community-based justice services that otherwise would be limited or unlikely to exist.⁸ The report further noted how the AJS Capacity Building fund had succeeded in promoting the development of crucial infrastructure – including both human resources and physical infrastructure – that helped develop and maintain the delivery of services provided by AJS-supported programs.⁹

The report also spoke positively of the community-building benefits achieved through AJS funding, both within Indigenous communities and in their relations with Canadian justice system partners:

⁵ The author gratefully acknowledges funding support provided for this research by the Department of Justice Aboriginal Justice Strategy Capacity Building Fund, research assistance provided by Field Coordinator Morgan Varis and Research Assistant Alexandria Flamand, cooperation and access provided by current and former staff of VATJSS, and the encouragement and assistance of Natalie Robins, Regional Coordinator for AJS programs.

⁶ <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/11/ajs-sja/ajs-sja.pdf> (Hereafter "AJS Statistical Overview")

⁷ <http://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/11/ajs-sja/index.html> (Hereafter "AJS Evaluation")

⁸ AJS Evaluation, p.ii.

⁹ AJS Evaluation, p. iii.

The AJS was found to be effective in achieving its intermediate outcome of involving Aboriginal communities in the local administration of justice, as the community-driven nature of AJS-funded programs promotes a sense of ownership and responsibility for the community-based justice program; program staff and volunteers are highly motivated and dedicated to assisting their communities. The inclusion of Elders and other local organization in programs further increases the local administration of justice and the investment of the communities in the programs.¹⁰

A central question for any justice program is whether it accomplishes its core goal of reducing crime and rates of incarceration. In that regard, the report concluded that,

Evidence that the long-term outcome of the AJS of “reduced crime and incarceration rates in communities with funded programs” is being achieved is evident through the results of the recidivism study, which found a significant difference between rates of re-offending of AJS-funded program participants and a comparison group.¹¹

Of further benefit is that these results were achieved for lower cost than would have been the case had these same cases gone through the Canadian justice system:

Results of a cost analysis based on 2008-09 data demonstrated that the average cost per community-based justice program participant was lower than the average cost of sending an offender through the mainstream justice system. This was especially true when considering the future cost savings to the justice system represented by the reduced rates of recidivism following participation in a community-based justice program. These findings indicate that the AJS is a cost-efficient alternative to the mainstream justice system.¹²

By 2012-13, AJS funding extended to approximately 275 community-based programs that served more than 800 communities across the country.¹³ While the results of the national evaluation demonstrate that the community-driven development of and federal and provincial support for Aboriginal justice programming is in general a win-win – good for both Aboriginal communities and Canada in general – they tell us little about what life on the ground is like for those who manage and administer these organizations in the process of achieving those encouraging overall results. The current research sought to complement the national evaluation by examining exactly that issue in the context of one particular organization – Vancouver Aboriginal Transformative Justice Services Society (VATJSS).

VATJSS: A Brief History¹⁴

VATJSS, which serves Vancouver’s diverse Indigenous community, was the fourth urban Aboriginal program in the country.¹⁵ It was designed emulating the successful community-driven process that led to the creation of Toronto Aboriginal Legal Services (TALS) a few years previous. As Kent Patenaude, who was Chair of both the Steering Committee and Aboriginal Caucus that managed that process explained,

¹⁰ *AJS Evaluation*, p. iii.

¹¹ *AJS Evaluation*, p. iii.

¹² *AJS Evaluation*, p. iv.

¹³ Aboriginal Justice Strategy (undated). *Aboriginal Justice Strategy Community-Based Justice Programs: Statistical Overview*. Unpublished statistical report.

¹⁴ The process by which VATJS came into existence is documented in a M.A. thesis by Tammy T’at’usayalthim Dorward (2005) of SFU/Criminology entitled, “*The Role of ‘Community’ In the Design and Development of Vancouver Aboriginal Transformative Justice Services.*” Online at <http://ir.lib.sfu.ca/handle/1892/724>.

¹⁵ The first three were in Toronto, Thunder Bay and Winnipeg.

The initial discussions began in approximately 1995.... At that time the Legal Services Society Native Programs Branch had met with the Native Community Law Office Association to discuss new initiatives... first of all, how can we develop programming to better meet the needs of Aboriginal clients and Aboriginal communities? We were aware of a program in Toronto, which was Aboriginal Legal Services of Toronto, which had implemented a restorative justice model.

So we began by taking a look at that program and we subsequently looked at other programs both throughout Canada and internationally. We had decided to strike a Steering Committee to assist us in our discussions and we tried to be quite inclusive. So we had the judiciary involved, Crown counsel, the Native Courtworker and Counselling Association, basically all the groups that Legal Services had some interaction with, and including government bodies as well, such as the Attorney General's office, the Solicitor General's office. So we started discussions on whether or not we could implement a similar program here in Vancouver.¹⁶

Several key principles emerged during the community consultations. One was the emphasis on ensuring that the program should be an "inclusive" one open to all persons who self-identified as Aboriginal, or who might have been estranged from their Aboriginal heritage¹⁷ and wanted to discover that part of themselves. Members of the community also were adamant that the core of the organization should be a healing-based forum that would be run by community members for community members with the objective of healing relationships and (re)integrating people into the community. The design of the program also was not seen as a one-time process that ended when the first protocol agreement was signed, but as the first stage of what was envisioned as an evolutionary process. As Barry Warhaft, co-developer of the program and its first Executive Director recounted in a recent interview regarding the decision to limit the program's scope at the outset,

It was probably one of the most profound experiences I was ever involved with to this day, to get to sit in the room with the Elders we brought together to talk about ... what a healing plan would look like, and what sorts of things might we fit in here. We wanted to do a kitchen sink approach, and it was Alfred Scow, and Vince Stogan and Chief Simon Baker ... just incredibly important people to the community, to the culture, who were part of this. ... I was idealistic, I thought, "The sky's the limit. We're not going to take these K files because we don't have the capacity to and there was concern about that, and no one was asking to deal with them, but there's a whole bunch of work out there." The question was how to evolve. So when that first case came in, we were content, because it was always part of the evolution, and we would accept it on those terms, within a certain construct, because we didn't see ourselves as being stuck. Next we would turn our attention to youth, and then we would turn our attention to community, and we would continue to grow in a way that the community saw fit.

¹⁶ Palys, T., Isaac, R. and Nuzsdorfer, J. (2012). *Taking Indigenous Justice Seriously: Fostering a Mutually Respectful Coexistence of Aboriginal and Canadian Justice*. Research report prepared for Vancouver's Downtown Community Court and Vancouver Aboriginal Transformative Justice Services. Online at <http://www.sfu.ca/~palys/PalysEtAl-2012-Aboriginal&CanadianJustice-final.pdf>

¹⁷ This happens in numerous ways. For example, many Aboriginal people have been placed in foster care in non-Aboriginal homes with families who had neither the knowledge nor interest to educate the children about their heritage. Many other Aboriginal people who went through residential schools were either unable to educate their children about their heritage because they themselves had been estranged from their families and communities, while others tried an assimilationist tack to try and help their children avoid the racism and discrimination they had experienced.

While the Elders and Aboriginal Caucus agreed with the federal and provincial representatives on the Steering Committee that the range of offences and offenders dealt with would be limited initially, and accepted that initial control over referrals would lie with the Crown, they also wanted it made clear that this arrangement would not continue over the longer term, and that the future should allow for growth and an evolving mandate as the program matured.¹⁸

VATJSS now has been in operation for 14 years, and the current evaluation presented the opportunity to take stock of how well the organization has lived up to its promise to be a community-driven Aboriginal justice program responsive to the needs and priorities of the community it sought to serve; and “to identify what the program does well, where there may be gaps, and where opportunities to address those gaps might exist through building bridges and partnerships in order to maintain and strengthen future justice services offered to Aboriginal people in the Vancouver area.”¹⁹

Data Sources for the Evaluation

Three main sources of data were compiled in order to carry out this evaluation. The first involved transcribing files from every client entered into the organization’s ongoing program database since it went operational in 2000 to the end of 2013.²⁰ This involved searching through and transcribing the digital archive that has been maintained by VATJSS since its inception, as well as scouring all the physical/hard copy files that were maintained for those clients to ensure that the information base we had was as complete as possible. A total of 976 unique files were identified and coded.²¹

A second set of data comprised interviews conducted with current and former staff members. This included both the original and current Executive Directors of the organization, and all current and former staff members who were willing to be interviewed. These data were particularly useful for understanding factors that influenced the evolution of the organization over time and the full range of program activities in which VATJSS has at one time been or is currently engaged. It also provided the opportunity to discuss the future that staff members could envision if Canada were to promote the development of Aboriginal justice systems to the extent anticipated in aspirational standards such as those outlined in the United Nations *Declaration on the Rights of Indigenous Peoples*,²² for which Canada has expressed its support.²³

¹⁸ See Palys, T. (1999). Vancouver’s Aboriginal Restorative Justice Program: The Challenges Ahead. *Aboriginal Justice Bulletin*, 3(1), 2-3, at 3. Online at <http://www.sfu.ca/~palys/VATJS1999.pdf>. See also the Dorward MA thesis cited in footnote 13.

¹⁹ VATJS (2013). *Building an evaluative framework for Aboriginal Justice programming*. Project proposal submitted to the AJS Capacity Building Fund.

²⁰ The 976 clients for whom data were available are not the only persons who have received VATJS’s services. As the report will outline, the program does many different things for community members, much of which goes statistically unnoticed.

²¹ I especially thank Field Coordinator Morgan Varis and Research Assistant Alexandria Flamand for completing this arduous task in the limited time frame we enjoyed for the completion of this research.

²² Two articles in the *Declaration* call for the creation and/or recognition of institutional structures that promote, develop and maintain Aboriginal systems of justice:

Finally, the newly-generated data outlined above were supplemented by and triangulated with secondary data sources whenever possible. An MA thesis by Tammy Dorward²⁴ was helpful in its documentation of the genesis of the program, particularly with respect to community involvement, expectations and aspirations. A data archive comprising interviews conducted by Richelle Isaac and Jana Nuszdorfer during a recent study of the relationship between VATJSS and the Downtown Community Court²⁵ shed light on the views that an important Canadian justice system partner had of VATJSS and its services, while interviews with VATJSS staff members added to the comprehensiveness of our knowledge about program offerings, and their strengths, limitations and evolution. We also benefitted from access to a client database (covering April 2007 to March 2014) maintained by the AJS from reports submitted by VATJSS that overlapped with the data base we generated ourselves.²⁶ This allowed for a partial reliability check and minimization of missing data in our more comprehensive database.

The project team is very grateful for the full cooperation we received from VATJSS staff and their candid discussion during interviews. It was very clear at all times that the administrative culture at VATJSS is one that encourages thoughtful discussion about the organization, evaluation and critique of the extent to which its goals are being fulfilled, and consideration for how the Vancouver Aboriginal community might be better served in future.

Findings

Cases

Our first interest was simply in gaining an overall picture of the 976 cases and clients who have been through VATJSS since it first opened its doors in 2000 to the end of 2013. Figure 1 shows how the general trend from 2000 to 2008 is an upward slope in the annual number of referrals with a peak in 2008 and a sharp drop with a very gradual recovery thereafter.

One plausible explanation for the drop is the advent of Vancouver's Downtown Community Court (DCC) in the fall of 2008.²⁷ While those involved in planning the DCC had staged community consultations prior to its creation and, at one such event I attended at the Vancouver Aboriginal Friendship Centre, assured those present that a prospective DCC would have no negative effect on the number of referrals that would come to VATJSS, it appears that was not the case. An examination of the number of cases referred by the Provincial Court and

Article 5. Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 34. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

²³ See Canada's *Statement of Support* at <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>

²⁴ See footnote 13 above.

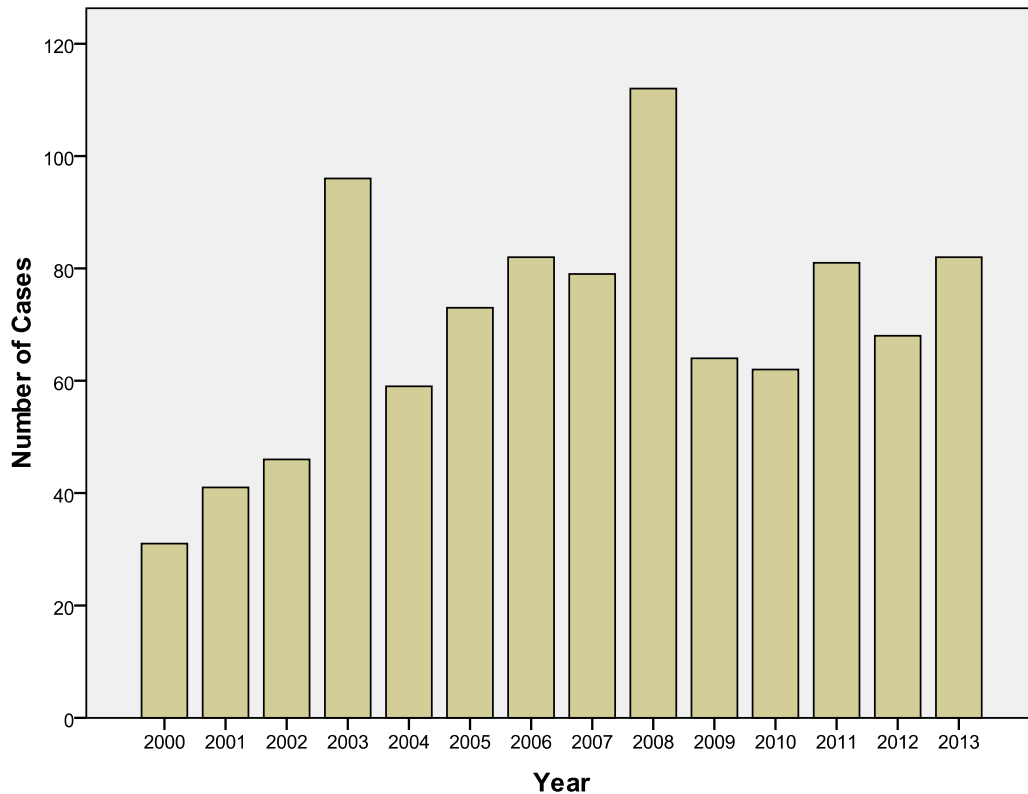
²⁵ See footnote 15 above.

²⁶ We thank Natalie Robins, Regional Coordinator for Department of Justice Canada, AJS programs, for this access.

²⁷ http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/community_court/index.html

the Downtown Community Court is consistent with that explanation. With the exception of one extremely high number of referrals (78) in 2003, the number of referrals to VATJSS from the Provincial Court Crown at 222 Main Street begins with a low of 11 in 2000, rising steadily

Figure 1. Number of Cases Per Year Processed by VATJSS



to a peak of 95 in 2008, falling precipitously to 37 the year after, presumably because a large portion of their caseload – including all of the Downtown East Side – was now within the jurisdiction of the DCC. However, this drop of 58 cases was not replaced by referrals from the DCC, who referred only 4, 3, and 1 cases to VATJSS in the years 2008, 2009 and 2010. The following year, 2011, structural changes to the relationship were made in which VATJSS was invited to have someone at the DCC to identify individuals for referral to their program.²⁸ Referrals since then have begun to climb, with 18 in 2011, 22 in 2012, and 34 in 2013.

Although the original protocol agreements assumed that most cases VATJSS would handle would come through referrals from the Provincial Court (some of which were later inherited via the DCC), cases have come from a number of different sources over the years. Table 1 shows the 10 different sources from whom referrals have arisen:

²⁸ See footnote 15 above.

Table 1. Referral Sources for VATJSS Cases (2000 to 2013)		
Source	Number	% of Total
Provincial Court	589	62.1%
Downtown Community Court	82	8.6%
Youth Probation	75	7.9%
Federal Court	60	6.3%
W. J. Stelmaschuk & Associates	49	5.2%
Self/Community	45	4.7%
UBC Law Clinic	42	4.4%
Native Courtworker & Counselling Association	3	0.3%
Toronto Aboriginal Legal Services	2	0.2%
Vancouver Aboriginal Law	1	0.1%
Total	948²⁹	100.0%

The number of referrals from different sources has varied over time over and above the shifts involving VATJSS's two biggest sources of referrals – the Provincial Court and DCC noted above. W. J. Stelmaschuk & Associates is a social service agency based in Maple Ridge that referred cases to VATJSS from 2000 to 2002 at which point it shifted its service offerings and referred no more.³⁰ The UBC Law Clinic did the same – referring cases from 2000 to 2006 and none thereafter.³¹ The number of referrals from others have waxed and waned over the years, but in any given year accounted for a small percentage of the total number of cases considered. One source that is currently on the upswing is self/community referrals, which in the last three years have increased in number from 2 to 7 to 21. Possible reasons for this change in the number of self- and community-referrals are discussed below in the section on programs.

Clients

Cultural Identity. Our focus next turned to those who were referred to VATJSS by the nine agencies listed in Table 1, as well as those who approach VATJSS on their own. Not surprisingly, virtually all (98.9%) of those who entered VATJSS's doors for whom cultural identity was noted

²⁹ Referral sources for 28 cases were unknown.

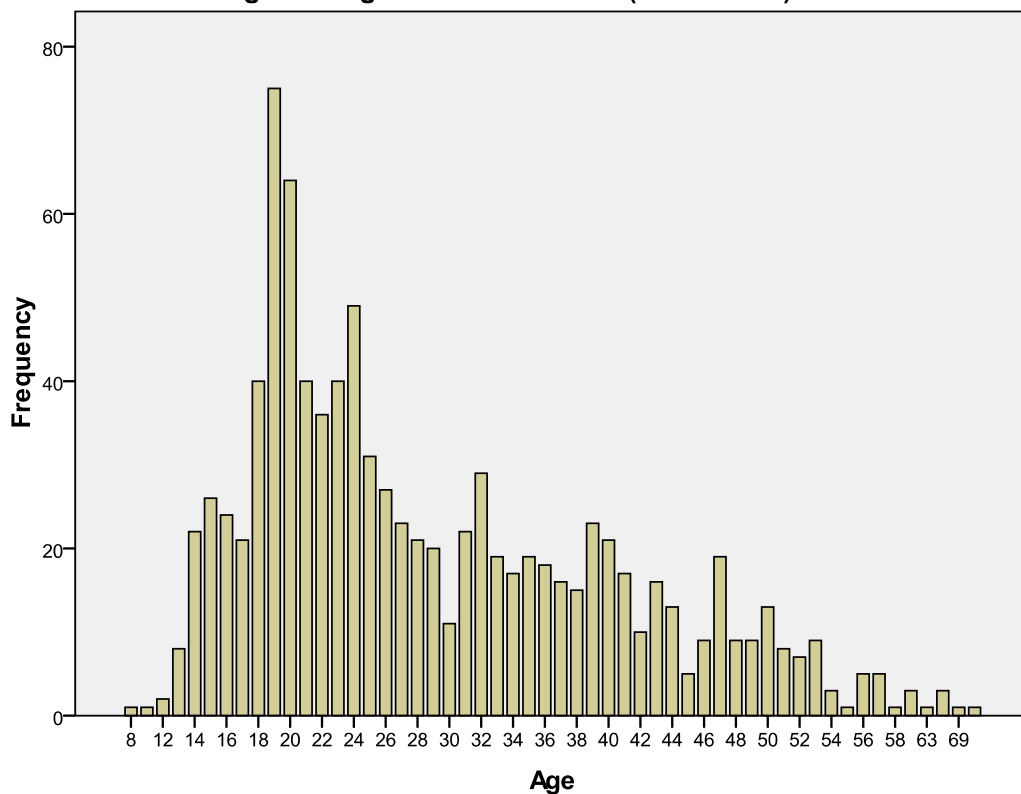
³⁰ The recollection of the original Executive Director of VATJSS is that the individual at W. J. Stelmaschuk who was the primary source of referrals left the organization to take a position with the Provincial Government and the individual who replaced him did not share the same interest in promoting Aboriginal justice.

³¹ The reason for this termination of referrals is not known.

were Aboriginal,³² although the distribution within this population was heavily weighted in terms of persons who were classified as “Status Indians” (N = 670 or 92.7%) as opposed to Non-status (N = 36 or 5.0%) or Métis (N = 9 or 1.2%). There were no Inuit clients. A further 8 individuals (or 1.1%) were categorized in the database as “Other,” and were presumably non-Aboriginal.

Age. There was considerable diversity among VATJSS clients with respect to age, as is evident in Figure 2. The range of clients extended from 8 to 70; the positively skewed distribution has a mean of 28.9, a median of 25.0, and mode of 19. Stated differently, 145 (or 15.3% of) clients whose ages were known were youth, while a further 804 (or 84.7%) were adults.³³

Figure 2. Age of VATJS Clients (2000 - 2013)



Given the substantial number of youth referrals, one question of interest was whether the youth and adults were qualitatively different sets of individuals who should be treated as separate populations, or could be aggregated together for the purpose of our analysis. Accordingly, several analyses were done in which youth/adult was cross-tabulated with other demographic and experiential variables to see what similarities and differences might emerge.

³² Cultural identity was available for 723 clients (or 74.1% of the total client population), while data for a further 253 were missing.

³³ Age information was not available for 27 clients.

With respect to more demographic information, any differences were consistent with what one would expect given the different experiences and expectations we hold of youth and adults in contemporary society: youth were more likely than their adult counterparts to be single (94.5% vs 71.4%); less likely to be employed (21.9% vs 41.9%); and less likely to have completed high school at this point in their lives (45.5% vs 64.5%). Youth also had a different primary referral source, with the greatest number (45.4%) coming through Youth Probation. On various “social problem” indicators, however, the youth population was quite similar to the adults – they were approximately equally likely to have substance abuse problems (83.0% vs 88.9%), were only slightly less likely to be homeless or at risk of homelessness (23.8% vs 33.1%), and the charges that brought them to VATJSS’s attention were quite similar (the modal categories for both groups were theft, assault and mischief, in that order).

In sum, although the demographic information revealed differences between youth and adults on variables one would expect, their social situation, problem and charge profiles are quite similar. Given this social and charge similarity, it was not surprising to find that the program options and healing plans youth and adults were expected to engage in were quite similar, as were their rates of successful completion (82.6% vs 82.2%).

Gender. One surprising demographic finding was the relatively equal distribution of men (N = 435 or 51.0%) and women (N = 414 or 48.5%) in the client population for whom gender information was known³⁴ given that, in general, men are far more likely to be processed through the criminal justice system than women.³⁵ Several analyses were run to see whether there were any significant distinctions to be made between male and female clients on such variables as referring agency, marital status, education, substance abuse, community involvement and crime. The only one that showed any significant difference was employment status, where only 50.5% of the male clients were employed, while an even smaller percentage – 25.8% – of the women were. Because of this overall similarity, in all subsequent analyses reported below, men and women are grouped together in the sample as a whole.

“Social” Variables. Although the completeness of the information available to us was often less than we would have hoped – information was often missing for more than half the client base³⁶ – we proceeded to use the best information available to try and compile a more complete profile of VATJSS’s clientele.

³⁴ A further 4 clients (or 0.5%) were classified as Transgender (actually 3 different persons with one individual coming through the program on two different occasions). Gender information had not been recorded for 123 clients (or 12.6%) of the client population.

³⁵ It is also a more equitable distribution than was found in the *AJS Statistical Overview*, which found 62% male and 38% female clients nationally.

³⁶ On many occasions social information would have been impossible to record because of the number of cases where VATJS was unable to contact the client who had been referred to them; this was true in 193 (or 20.7% of) cases. On other occasions the data simply were not recorded. We were also told there were several occasions where some “housecleaning” had been done and the social information contained only in paper files had been destroyed for confidentiality reasons when cases were closed and the information was no longer required; records in the computerized data base were untouched, however.

The identity, age and gender information noted above indicated that the modal VATJSS client is likely to be a young adult Status Indian who is equally likely to be male or female. S/he is also likely to be single (76.6% of all clients), possess a high school education (60.8%) or less (29.3%), and have problems with substance abuse (88.2%). Almost a third of all clients are homeless or at imminent risk of being homeless (31.8%). Given the large number of referred individuals who could not be contacted (N = 193), and the plausibility that their educational attainment is lower and their incidence of substance abuse and homelessness higher, the figures given in this paragraph likely present a more positive picture than is actually the case.

When clients are first interviewed, the intake protocol at VATJSS calls on the justice worker who interviews them to make a judgment about the extent to which the individual is involved socially and in the community. “Social involvement” is intended to assess the extent to which the individual is connected to a social network of family and/or close friends, while “community involvement” addresses the extent to which the person engages in activities within the broader Aboriginal community, such as attending events at the Aboriginal Friendship Centre or any other community centre. Table 2 shows the results of that assessment.

Social Involvement			Community Involvement		
Extent of Involvement	N	%	Extent of Involvement	N	%
Full	40	08.6%	Full	17	03.6%
Some	231	49.8%	Some	243	51.4%
None	193	41.6%	None	213	45.0%

Perhaps most striking is the finding that fully 41.6% of clients had no connection to family and/or close friends and 45.0% had no interaction at all with Vancouver’s or any other Aboriginal community at the time of their referral. When we consider that there is considerable missing data on this variable – it is available for only about half the clients – and that fully 38% of the missing data arises from individuals who were referred but with whom no contact could be made, the numbers of individuals with no family or community contact shown in Table 2 may well represent a significant *underestimate* of the alienation VATJSS’s clientele has experienced. While almost certainly marginalized from the broader society, it thus appears people who end up being referred to VATJSS have been disconnected from the Aboriginal community as well. The general impression that emerges is that the “typical” VATJSS client is a marginalized individual with limited opportunity and limited resources with which to enable their social recovery.

Charges. The VATJSS clientele come not only with social histories, but also in most cases with particular charges for which – in order to be referred to and accepted at VATJSS – they have

agreed to take responsibility. In the case of self or community referrals, there are zero charges involved. Most individuals arrive having been charged with one crime (N = 832 or 85.2% of all clients), while a smaller number (N = 109 or 11.2% of all clients) arrive with two charges. Two individuals, representing 0.2% of all clients, were referred with three charges. Table 3 shows the 12 most commonly occurring charges, which account for 96% of the 988 charges for which data were available.³⁷

Table 3. Charges Incurred by VATJSS Clients					
Charge	N	%	Charge	N	%
Theft	454	46.0	Breaking & Entering	19	1.8
Assault	175	17.7	Trafficking in a Controlled Substance	19	1.8
Mischief	126	12.8	Corruption and Disobedience	16	1.5
Possession of a Controlled Substance	60	6.1	Firearm Possession	12	1.1
Possession and Trafficking	24	2.3	Fraud	12	1.1
Offenses Related to Prostitution	20	1.9	Disorderly Conduct	9	0.9

The table reveals that three out of every four charges (76.5% of all charges) from 2000 to 2013 involved theft, assault, or mischief.

VATJSS Programs and Activities

One of the most striking revelations in interactions with individuals in Canadian justice system agencies is how little staff in these other agencies often know about what VATJSS actually does. Perhaps not surprisingly, their understanding of VATJSS tends to be based on their own conception of what a “justice” agency does, how justice systems work, and how VATJSS fits into their sphere.³⁸ It thus behooved us in this project to begin by outlining the way VATJSS has come to define its mandate and go about its work.

It’s the Person As Much As the Crime

If there is a characteristic approach to justice programming at VATJSS it is that the focus of attention is not simply on what the individual who walks in their door has done or is doing that has led to his/her appearance at VATJSS, but also on who they are, how what they did reflects who/where they are at this point in their lives, and developing a healing plan that identifies constructive things they can do to start on a path that will contribute to themselves and their community. In the early days of VATJSS this almost exclusively would involve bringing the individual into a community forum. Although there are other practices VATJSS engages in these

³⁷ The charges accounting for the remaining 4% include Escape and being at large without excuse, Robbery, Defamatory Libel, False Pretences, Procuring, Corrupting Morals, and Refusing to give a blood sample.

³⁸ See, for example, the study cited in footnote 15.

days, which will be reviewed below, community forums are still held, and are the appropriate place to start this inventory.

The Community Forum

Community forums are held when a referral involving crime or some other form of trouble – which may arise from a criminal justice agency or a self- or community-referral – warrants a community-based intervention to assess what led to the event(s) and develop a healing plan that starts to address that situation. Even before the circle is scheduled, a series of personal interviews occurs in order to properly prepare. A justice worker described this process:

First is “nitty gritty,” all the paperwork, making sure that their recollection of what happened matches up with their particulars, and they have to take responsibility, otherwise they end up getting sent back. They can either go to trial or choose to plead guilty later. The second one is the “get to know you.” That’s just getting to know their personal information. And the third one is “more about who you are as a person” and “what your goals are for the future,” and then we go into a circle. So, I compile all the information, create a synopsis of the event and then a synopsis of who they are as a person.

Any given circle would include the offender (and his/her guardian, if a youth), any family members who would wish to attend, two community members, an Elder, and the justice coordinator/facilitator from VATJSS. When victims are involved, they would be invited in most cases,³⁹ although only a minority attend (about 30% of those cases involving victims, according to our limited statistics on that issue). Although it is not unusual to see descriptions in the literature, often by non-Indigenous authors, that equate the forum process to a “court” that determines “sentences,” this misrepresents the attitude of the circle, which sets out not to be judgmental, but to be helpful. As a former staff member who worked with community forums explained, two contributors who play a helpful and powerful role in setting the tone for each forum are the community volunteers and Elders (who are also volunteers):

I guess the strengths of the program for me, when I facilitated a circle, they [volunteers] did provide a lot of different types of thinking, they brought different questions to the circles, and they also provided a feeling, like an essence within the circle, so that whoever was sitting at the circle at the time, it triggered them, it brought them to the reality and the importance of it, and kind of like a spiritual aspect of it. Because they knew they were being supported, because we had an Elder. And of course in our teachings, Elders are huge in terms of providing wisdom and support and love. And so I think for sure with the volunteer base it was a huge success and a strength for us. Because I found every single time we had a circle, it always felt like the people who needed to be in that circle for that specific person, were the ones who ended up there, and it would end up making the circle easy and more impactful for the person sitting there. I think another success is that it does create more of a community, even outside of VATJSS.

³⁹ One justice coordinator who has worked with youth indicated that victims rarely are asked to attend youth forums. As she explained, “Very rarely it’s actually appropriate with youth because with the adult and the youth dynamics and the freedom of information and stuff like that...I actually haven’t brought a youth. I’ve had victim input put into the circle and kept the victim updated but it’s never really been appropriate to bring them together.”

The focus of each circle, then, is to understand what personal or situational factors contributed to creating the trouble the person was in and getting to the point where those present, including the offender and any victim that was present, have an action/healing plan they agree on. The general types of healing plan options were coded from the database in four general categories: (1) **Education/Training**, which involved the individual receiving some sort of VATJSS-based programming that was designed to address specific issues that arose during interviews and/or the circle process;⁴⁰ (2) **Spiritual Activities**, which included such activities as speaking with an Elder, learning about traditional knowledge, attending sweat ceremonies, and so on; (3) **Community/Victim**, which involved the offender in some sort of work that benefitted or in some way involved the individual in community events, and/or which saw him/her apologizing to the victim (assuming there was one); and (4) **Other Creative Measures**, which were not outlined in the database but would have referred to some of the other activities outlined in this section below, or that might involve referral to an outside agency. The frequency with which the different options were utilized are shown in Table 4.

Table 4. Frequency of Use of Different Healing Plan Requirements	
Requirement	N⁴¹
Education/Training	146
Spiritual Activities	112
Community/Victim	85
Other Creative Measures	46
Total	389

Responding to Community Need

The Community Forums that were the mainstay of VATJSS in its early years have continued, but are now by no means all that VATJSS does. VATJSS is a program that was designed from the ground up. The entire process and its foundational basis in the community is well-documented in an MA thesis by Tammy Dorward,⁴² and the program’s philosophy has remained true to that commitment. As the Executive Director affirmed in a recent interview, “It’s not up to us to decide what ‘Aboriginal justice’ means in our community; it’s our community that decides this and they have no problem letting us know.” There are several examples of programs that have developed out of the needs that were identified in circles, as well as from self-referrals of those walking in the door. The earliest of these involved problems associated with housing and homelessness.

⁴⁰ These programs are discussed in greater detail below. Information is also available on the VATJSS web site at <http://www.vatjss.com/vatjss-program.html>

⁴¹ Percentages are not given because it was not unusual for a given client to have requirements in more than one category.

⁴² See footnote 13.

Housing and Homelessness

Recall that fully a third of the clientele who are referred to VATJSS are either homeless or in imminent risk of homelessness. Accordingly, very early in its existence VATJSS sought additional funding around the homelessness issue and now has two persons on staff, one full time and one part time, who deal with various aspects of the homelessness problem. And the problem is acute; one staff member suggested that 90% of the walk-ins at VATJSS involve housing and homelessness issues. The part-time staff member does screening and provides advice to those who are searching for housing listings or basic housing advice, which VATJSS also offers; the full-time Housing Outreach Worker deals with more intense cases, some of which arise from community forums when housing is a problem for the individual client, but which also arise from walk-ins who have heard about these services. The Housing Outreach Worker described the significant role that housing outreach plays at VATJSS and how it fans out and connects to other issues that arise in the justice circles:

In the last year the Justice Coordinators] and I have really worked together to enhance our partnership and focus on a full circle approach with all of our clients. It's mostly based on the Housing First module. If the housing is secure and all of those issues are in place it sort of helps all the other chaos in their life and [they] stabilize faster. So part of the intake for them is discussing housing; sometimes they're living in chaos or they're homeless or they're at risk of homelessness so they come and see me and we work on it simultaneously. So while [the justice coordinators] are working on the Justice part and doing the program they're also working with me and we identify the housing issues and either get them housing or we address the issues. One of the things I do is go over their housing history and identify what's been happening to...like, ok so you're homeless again or at risk for homelessness again, and it's really client-driven but I say, "what can we do to prevent this from happening again?" I notice that this, this, and this is what's been happening so let's work on that. And at that point I either refer to drug and alcohol counseling or I do things like we can do budget work together. Sometimes they want to go back to school and they don't know how so I'll refer them to Access or Native Education College, so [those are] just sort of barriers to help them maintain housing.

Although the housing initiative within VATJSS originated within the Community Forum process, once established, it was clear from the increasing number of walk-in self-referrals who began arriving that a significant problem was being addressed. The Housing Outreach Worker noted that it is not unusual to have an ongoing caseload of 20-30 clients, which excludes those who drop in simply searching for housing information. When asked what proportion of the 20-30 would be justice-related referrals, she responded,

Out of 30 I see maybe 5 come from justice referral. We're trying to do it more and Christine's come up with an amazing idea of one of the programs we'd like to develop is actually having housing circles, the same philosophy as with the healing circles, to be accountable for the reasons why you end up being homeless ...you know, do the whole circle. I think [one of the other staff members] is going to be working on a program like that, so that would elevate the connection with justice even more. It wasn't until I started that we started trying to do more full circle with the justice and it's been really great. Both [justice coordinators] send clients to me...I just had one from [another justice worker] the other day and I helped her identify that she needed to get some alcohol and drug counseling, so I connected her there. It's just another piece, a huge piece, of your housing, of what goes on that people in the situation end up in justice. So it's a lot of the same issues that would prevent you from having stable housing would cause you to shoplift or drink and get into a confrontation, so it's a lot of the same.

Thus, while the Community Forum revealed and deals with the criminogenic consequences that can be associated with homelessness, the Housing Outreach programming that VATJSS offers also plays a crime prevention role by helping establish a basic level of stability for a highly marginalized population before it becomes manifest in criminality.

Advocacy

Given the understanding and implications of the problem the Housing Outreach Worker has come to appreciate over the years, it is perhaps not surprising that she has become involved in trying to better inform politicians and policy makers of how the problem plays out in the Indigenous context:

Housing Outreach Worker: It's not just strictly housing. I actually got to go to City Hall and talk on this just a couple weeks ago. There is not a true picture of Aboriginal homelessness in the community because – and I'm sure this is true for other nationalities as well – but in the Aboriginal community people tend to stay with family and they don't put people out so I see people who have 15 people in a one room house and everybody stays together, so Aboriginal people are still the highest number of homelessness in Vancouver, but...

Interviewer: If this were any other community they'd be out on the street?

H: Right, exactly. There'd be even more because family stays with family and everyone just piles in and they make do.

I: Because you can't say no.

H: Right. And so I do housing applications for all the subsidized housing but their waiting lists are really long. But I do that because: (1) I want their name on the list, and (2) I want the government to see the numbers.

Given that the statistic that 80% of the homeless population is Aboriginal is based on “official” counts that do not take into account the propensity of Aboriginal people to take family in on a “temporary” basis, thus making them unlikely to be found on the street when the homeless count occurs while homeless nonetheless, this suggests the already acute magnitude of the problem is nonetheless also likely an underestimate.

Respectful Relationships/Sacred Connections

Yet another program that developed out of community need and was fostered by AJS involvement is the “Respectful Relationships” program that helps couples in non-communicative and often abusive relationships avoid violence and establish foundations for communication. The justice coordinator described the genesis of the program:

So it doesn't really fit into the formal circle process but Sue Hendricks -- the Provincial Court Leader for Aboriginal people in the Department of Justice -- got a representative from all AJS programs across BC to take this training through the Justice Institute to get your facilitator skills and to get Respectful Relationships, so how to teach it. It was designed for male offenders post-charge so they had to be on probation to access it. So the hope was that more Aboriginal people would co-facilitate with probation to be better for the Aboriginal offenders who were going through Respectful Relationships. Here in Vancouver there's many trained facilitators for Respectful Relationships and it wasn't really my passion to go work with probation, but I told Christine that we're constantly getting referrals from Crown for K-files but can't take them because when we first started the program the community said that those issues run too deep

for the process that we do but it was to be reevaluated later, so we did two testers to see what we found out – to see whether we'd be ready for K-files or what that would look like.

After the trial run went successfully and the resulting report was well-received by Crown, the Justice Coordinator began to consider how the program – which was a generic probation creation – might be adapted to better serve the Aboriginal Community's needs.

Because it went so well for each of them personally I started to take a look at the program and I thought: how can I make this more community-based for what our community needs? So, I took a format, brought it to Christine, we regulated it, I met with the Native Courtworkers and just created a structure and said, "This is what my plan is: I'm going to do it similar to ours, we're going to bring the person in, go over what happened, they sign the papers. The next one, I'm going to do a timeline with them to find out what their foundation is relationship-wise and what our goals are for the future so I know who they are as a whole person." The program is 10 sessions, or, ten components. So through probation they have to sit through ten sessions with a group of 10 to 15 men. ... So what I decided was since it's not through probation I'll get to know them as a person and pick 5 of the 10 chapters based on where they're at; which five will be the most important for who they are as a person. It just started flying through the courts and getting recognized and really really tough crowds that didn't want to support the process just kept seeing results.

And again, as word spread in the community, people from the community started stepping forward and self-referring. But before long, with no additional funding to hire and train more staff, the justice coordinator's time was spread thinner and thinner, and the program is now constrained by its success; the justice coordinator has stopped taking self-referrals and is limiting her involvement to court referrals only, while also adapting the program to create a version of the program she is calling Sacred Connections, which will include Aboriginal teachings to make it more meaningful to the community. The challenge will be to find the funding to develop and implement it:

If I do get the funding my plan is to create a new program because it's called Respectful Relationships like probation but it's not the same. When I write a letter to the courts it looks like they're doing the same program as probation but they're not, so I always have to go into detail about why it's different. So what I want to do is keep the structure but call it "Sacred Connections" and start infusing Aboriginal teachings within it. So, indigenizing it a little bit more but still have it strongly recognized in the courts. I've been working with VACFAS [Vancouver Aboriginal Child and Family Services] for preservation plans for families.

As with housing, the Respectful Relationships/Sacred Connections program has on the one hand arisen from a criminal context – although, ironically, in this instance at least, in one that was outside the original realm of cases that was permissible for VATJSS to address – while its implementation for self-referrals and community-referrals allows it to be used as a tool for community building and crime prevention. While AJS should be lauded for providing the opportunity for the Justice Coordinator to have the training that has led to these further developments, whether the funding will be there to develop it further remains an open question.

Substance Abuse Management (SAM)

A positive aspect of the Respectful Relationships/Sacred Connection program is that the Justice Coordinator who was trained in the Respectful Relationships program and is developing its Sacred Connections variant indicated she wants to ensure that others are also trained in her process to ensure the expertise remains even if she should leave her position. That was not the case with a former justice worker who was running a Substance Abuse Management (SAM) program – which also was made possible by training funded by AJS – as well as a group for Aboriginal men. In those cases, both ended when he resigned his position to take another job elsewhere, with no one to replace him.

Child Apprehension

Another issue that arises in the Aboriginal Community with justice implications is in the realm of child apprehension which, like prisons, has an over-representation of Aboriginal children. At times individuals in the community will draw particular cases to VATJSS's attention – looking for advice on how to respond, or wondering what their rights are in such cases – and the Executive Director will sometimes intervene. Here is one example she shared:

We had a couple that were coming here to access services whose kids were apprehended. They were both heavily involved in drugs and alcohol, knew that they couldn't provide care and were actually from a community close to where I come from. They said, "We're trying to get them home to the grandparents but the Ministry, VACFSS down here is not letting us send them back and they're all spread out in different homes." And I said, "Well why not?" And they said, "Well, I don't know. They just said there is not enough resources in the reserve."

It's like, you've got to be kidding! There's an abundance of resources in that community! So I make an appointment, meet with VACFSS, and ask, "How come you're not sending these kids home? There's 5 of them that are all spread out and don't have each other. The grandmother has a 5 bedroom house. I'm not understanding why this is not happening." And they had an excuse: "Well, there's not enough resources." I said, "I think you'd better think about that again. You're talking about an Aboriginal community, a reserve as you call it. You don't know that it doesn't have any resources. And there are resources that are paid and there are resources that are not paid that are really important. So that's not an option. So you need to work on getting these kids back to their grandparents. There's a feast coming up where the kids are getting their names. It's important that they get their names. This is your mandate that says that anywhere possible to keep the family intact." So, getting a hold of the social worker in the village saying, "we got a hold of them, now jump on it."

So they did and the kids ended up getting all shipped back up North, and it happened fairly quickly. Had we not intervened, those kids would probably still be down here. The grandparents were told: you're a little bit older. There's not enough resources there, and they just accepted that. They wanted the kids really badly but they had no idea. I'm telling them, "DO NOT accept 'no' for an answer! That is your right to not accept no as an answer. You tell them that these are your grandchildren, you want them home. You guys both have no criminal records, you have stable income coming in, you have a 5-bedroom house. I don't know why there's any reason these kids should not be back there."

Those are kind of the high level ones. I don't intervene in all of them but some, there's no other choice but to kind of use my name and say, "let's have a meeting." But it's about our community whether it's dealing with our own organization, which is VACFSS and letting them know that it's about ensuring that all of our people have their rights protected.

And More

VATJSS also was able to isolate funding to support Aboriginal youth basketball teams to travel to tournaments. As the Executive Director explained,

Even our basketball prevention dollars ... I can't think of any other dollars that are better spent than on those basketball teams because you're creating not only positive things for these players to do, but you're creating a connection to them so that when they get into trouble – whether it's with the justice or housing or relationships or whatever – they go, "Christine, I can go get a hold of Christine because I have that relationship with her because of the basketball stuff."

Other requests from the community are dealt with on a case-by-case basis as they arise. The Housing Outreach Worker described some of the many different services that she provides for members of the community in an effort to deal with their needs and help them out of, or to avoid, situations that otherwise would lead to trouble.

So what else do I do? We get ID, we do budget counseling, I help people create resumés and do mock resumé interviews. I've also helped people get their Serving It Right on the computer, I do welfare applications, EI applications online – I'll sit with them and do it, referrals to food – free food in Vancouver, inexpensive food or free meals, clothing, referrals to free clothing, inexpensive clothing, furniture, movers, storage lockers, I do all that. If someone is at risk of losing all their stuff or has lost all their stuff – which happens a lot when you get evicted or just walk away – I help them get their furniture again and everything they need. There are a couple of organizations I work with. It's sort of whatever they need. We try to come up with a 3-6 month plan to get them stable. And we have a small small small budget, it's \$1,200 a month for supplements. That doesn't go very far.

The Homelessness Liaison noted that the day before our interview she had a request for information about ICBC and ensured that the community member was referred for appropriate legal advice. VATJSS also coordinates volunteer tax consultants who help members of the community file tax returns each year. There is also a resource room with network access that community members often use to check employment or housing listings. As the Homelessness Liaison explained:

We have people who come in who are wanting to find housing so there's a few different websites that I can set them up with on the computer. Or they have resumes they want to be faxed out or housing applications we'll fax for them. [I] provide support letters. I also do Quest referrals, refer clients to the Baby-go-Round which assists them with different stuff for their babies.

The Executive Director shared another example involving members of the community coming to her when there is a death in the family, and having no experience with funeral services or anyone to turn to for advice about what to do. Her response was to step in and contact a funeral service and advise the client how to proceed.

Notwithstanding all these initiatives and VATJSS's responsiveness to requests, they do stop short of trying to be all things to all people when there are other agencies in the community who can provide a needed service. The question for VATJSS personnel is always whether there is someone in the community who has the mandate and resources to deal with any given

community member request, in which case a referral will be made. But they also never turn anyone away who has nowhere else to turn, and will do their best to address their concern.

The Door is Always Open

One aspect of VATJSS that is unique in my experience is that, while individuals who are referred to VATJSS are required by the organization's protocol agreement with the Crown to close any given file and send a report about whether the individual has completed their healing plan within 3 months of the referral, they are welcome to come back at any time to access services if they feel a need, and often do. As one justice worker explained,

For me, it became really clear that there were deeper issues that needed to be addressed for any of this to change, so of course we had to address what they did on the day, and how we could make amends for that, and that it is important for them to realize that they do need to, I guess, take responsibility and accountability. But I also felt that of course there are way deeper issues that come into play when something like this happens and it's not only just one thing, it's usually compounded from childhood I would say and from so many different areas in their life, so I came and that was my focus was to really dig into that and also being aware that you can't really open their wound and throw them out the door and say, 'okay, it's 3 months later or whatever' so being delicate and gentle about how to work with them. But knowing that we could provide a foundation, or resources or referrals that could help them when they do leave here and keep them on the path. And also knowing that we would always be there for them, we're just a phone call away, when they left and they were done, usually they felt really great about it but we always wanted them to know like life happens and there will still be things that will come up for you, that will trigger you, and just call us, for whatever, you can come in and talk to us, we can provide counselling for a different organization or whatever it may be, and then having our homelessness program also being able to refer them to that if things came up, crisis-wise, that's something I always thought was really positive about our program.

This statement is a reminder that Aboriginal justice processes are not about punishing or exiling those who offend, but of showing them the way back, letting them know and making them feel they are part of a community and hence always welcome, and fostering their gifts both for themselves and the community.

Evaluating Program Effectiveness

VATJSS has a curious relationship with the Canadian Justice System insofar as it is in some ways treated as if it is a part of it, while in other ways there are constant reminders that they are outsiders who are not part of what the Canadian justice community appears to see as the "real" justice community. One example comes in relation to recidivism data, which in many ways represents the bottom line statistic by which all justice programs are ostensibly judged. It is all well and good if one offers *more* than a reduction in recidivism, but if one does not help reduce crime, or cannot show that one can do the same job for less money, then a court or program becomes suspect.⁴³ The AJS evaluation of 2011 addressed that issue on a national scale –

⁴³ Of course one should not ignore the role of politics in the evaluation and funding process, as political priorities are often known to trump empirical evidence both in funding ineffective policies and programs and in terminating effective ones. See, for example, Carolyn Weiss (1993). Where politics and evaluation research meet. *Evaluation Practice*, 14(1), 93-106.

showing that AJS programs had better recidivism rates and cost less than comparable Canadian justice system programming – but data are not available directly to VATJSS, nor were they available to us, to allow VATJSS to evaluate its programming initiatives on an ongoing basis. As a justice program that is mandated to try and reduce the number of Aboriginal people coming into trouble with the law, and in the larger scheme of things helping Canadian courts reduce the over-representation of Aboriginal people in prisons, VATJSS personnel expressed interest in being able to access data that would allow them to determine how those who have been referred to them by criminal justice agencies fare after they leave.

In the absence of recidivism data, and recognizing both the diversity of their programming and that there are many other objectives that the community has mandated for VATJSS – crime prevention and community building to name just two – VATJSS staff look to other indicators to evaluate their program success. When asked to reflect on how she would define success in the context of the community forums, for example, a former justice worker explained,

Well the basic would be successful compliance, or at least partial. You know you're exposing them to things that they need in their lives at that moment. But also just the trust-building. For me that was a really big one, because when they come into this process it's quite scary. When they walk through the door all they know is 'justice' and usually for people in our community 'justice' is a really scary thing. And it's like any kind of social construct. We've been affected by it, for our entire existence, but colonization occurred. So being able to allow them to walk through these doors, having to sit down and tell me their entire life story, is huge. And so being able to create such an environment that they're so comfortable that it just starts to come out and flow out for me that was a huge success, I guess, just even in their lives, because sometimes it was things that they've never shared before. Or even if they did share it, they never received any kind of feedback that was positive about it. Some people you would talk to them about maybe what they did and say "you know maybe grief affected that and maybe propelled you into getting you into the point you were at," and so creating scenarios that would help them to understand their behaviours. And a lot of them would actually be shocked, or they would say "I've never heard that" or "Nobody's ever shared that with me." And it seems shocking to have gotten almost through most of your adult life and not having even been given a direction about it or advice about it or whatever it may be. So for me that was a success as well. At least when they walk out those doors it would still be in their mind, they would still remember it.

Table 5 shows compliance data among those clients who went through VATJSS processes that resulted in healing plans. The data show 82% full compliance and 92% full or partial compliance overall, with little variation across healing plan categories. Such results are promising; certainly it shows that individuals are following through with the tasks the community asks them to undertake, even though it leaves open the question of what their effectiveness is and how it might be manifest.

Another indicator of VATJSS's success comes from their community partners and referring agencies. The justice coordinator, for example, described the positive feedback she has been receiving from both police and Crown in relation to the Respectful Relationships programming, which is resulting in fewer breaches of probation conditions. She explained that the positive feedback from police was generally word-of-mouth, while in the case of the Crown, it also was

shown in their willingness to write a letter of support in the justice coordinator’s search for program funding.

Table 5. Healing Plan Requirements and Their Compliance Outcomes

	Outcome:	Successful Compliance	Partial Compliance	Non-Compliant	Total
Healing Plan Requirement	Education/Training	118 (80.8%)	16 (11.0%)	12 (8.2%)	146 (100%)
	Spiritual Activities	94 (83.9%)	11 (9.8%)	7 (6.2%)	112 (100%)
	Community/Victim	67 (78.8%)	10 (11.8%)	8 (9.4%)	85 (100%)
	Other Creative Measures	40 (87.0%)	2 (4.3%)	4 (8.7%)	46 (100%)
	Total	319 (82.0%)	39 (10.0%)	31 (8.0%)	389 (100%)

The stature of the organization is also revealed by the way other AJS programs act toward them, and indications are that VATJSS is seen as the flagship program in the province. For example, a situation has arisen in another BC urban centre in which questions have arisen about the adequacy of police investigations in the case of questionable causes of death regarding several Aboriginal youth over a relatively short period of time. This places the AJS program in that community in an awkward position because they are challenging a justice agency they have to deal with on an ongoing basis. The VATJSS Executive Director was asked to intervene and is marshalling the resources to address the problem:

So there’s a couple of Provincial initiatives I got involved in because of the fact that a particular community – their Aboriginal Justice Program – really couldn’t get involved because they were advocating against the people that referred to their program, so that presented a problem and the families were a little bit hesitant to go that route because of that very fact. And for that program I don’t blame them, because it’s really difficult, especially in the smaller communities to have the referral services that they have. So getting involved with that, I kind of think that’s what we do best: seeing that there’s a gap in the community, there’s a gap somewhere. We’re trying to create a resource so that gap will not continue to be there, whether it’s in our community or Provincial-wide.

It’s also making the right connections. The case that I’m involved in [that urban community], it’s making that connection to the Provincial Health – Aboriginal Health Director to let them look at cases like this. It’s making connections to get BC Civil Liberties to talk with the families, have them sit down to do that. How do we start building that infrastructure so that eventually it becomes bigger and people start thinking about, how can we fill that gap so that doesn’t happen? That’s the advocacy and the capacity building. It’s actually in our Aboriginal justice strategy. That’s the only way I’ve been able to do a lot of these advocacies because it’s stated in

there, to build capacity in your community. So whenever they question me on it I say, “build capacity in the community!” That’s what it means to me...

Particular programs also have their own indicators for success. When we asked the Housing Outreach Worker how she defined success, she replied,

BC Housing measures success as “remaining housed after 6 months,” so that’s my objective that I have to meet as far as BC Housing is concerned. I measure success in ... sometimes just getting someone housed, getting them off the street or getting them out of a shelter. I measure success when people feel like they can look at the next picture in their life because when you’re in survival mode and your only focus is on housing nothing else can come into play, so if we get that...I measure success in...it’s so different. I’ve had so many success cases and some of them were really small, some of them were bigger, some of them were really hard. Because I get mental illness, I get addictions, I get all sorts of obstacles that there’s such a long ...I guess success for me is if they don’t have to come back to me.

When one prides oneself on being a community-driven program, a major source of evaluation is one’s reputation in the community. As the Executive Director explained,

The community tells you right away if you’re doing a good job or not. A lot of the forums – organizations – that maybe aren’t doing a great job, you hear a lot of talking: they kind of be doing this, they never help these, and you always hear our name, Transformative Justice, never turns anybody away. [They say], “they helped me tremendously. I’m very grateful.” We hear a lot of that and I think it’s because we’re not so focused on, this client counts for this project. We’re just saying, “let’s get you some help and we won’t be that door that closes. We’ll make sure to get you to the right place.” People know that. In the Aboriginal community it doesn’t take long for people to know that, oh go see Transformative Justice, they’ll help you do tax clinics even though it’s not part of the justice program but it definitely affects all of our people, so it’s kind of keeping your hand on the pulse of, hey, what does our community do and what are our community needs that aren’t being met out there as well? ...

We’re engaged in the community, we’re on different committees like the Aboriginal Homelessness Steering Committee, we go out to community events. A lot of our success stories are people coming back in, people getting housing that now the amount of people that we get into housing, supportive housing, regular housing with the Janis program, it’s the people that come back in and say, “thank you very much. Me and my wife and my child last week were here and we just wanted to stop by and tell you thank you. You’ve not only really just saved our relationship but our family, our child. The Ministry was involved talking about the violence that was happening. I’m now working, our communication is better.” How do you measure that? The amount of money that that particular service saved the whole system out there is just astronomical. If they got put in Ministry or foster care or this person ends up in jail. All of those dollars that we’re saving just by administering that program.

Another indicator of the community’s evaluation of the organization is the extent to which VATJSS is beginning to see self- and community-referrals. My experience with this and other programs suggest self-referral is an expression of confidence and trust in the program and an affirmation that they are providing programming that is useful to the community. To the extent that self- and community-referrals involve the community coming to VATJSS instead of dialing 911, it is also an affirmation of the community’s desire to engage in culturally relevant programming instead of the “foreign” Canadian justice system “that failed Aboriginal people at every turn,” as so many inquiries into the Canadian justice system’s treatment of Aboriginal

people/s have concluded.⁴⁴ In that regard, the last three years have seen VATJSS self-referrals increasing from 3% to 11% to 26% of their total annual caseload. Indeed, the primary concern is that they again will become victims of their own success, unable to address community demand with their current personnel in addition to fulfilling their obligations to other referring agencies.

Aspirations

In addition to focussing on past achievements and trying to assess program success, our interviews also focussed on the future as we asked each staff member what directions they would like to see VATJSS move in if there were opportunities to do so. The Executive Director identified numerous ways in which VATJSS could extend its involvement in the provision of justice services for Aboriginal people involved with the law. Having a probation officer on staff would allow for the supervision of Aboriginal persons on probation, while a victim services worker could better assist Aboriginal victims.

Someone who could act in something like an ombudsperson role with respect to families who have experienced child apprehensions also would be useful. Part of the problem appears to be that while child apprehension processes are highly efficient in gathering Aboriginal children, they are less well-equipped to evaluate alternatives that might exist within the Aboriginal community and/or to develop effective strategies that would allow parents to develop the skills that might warrant their children being returned. Some authors have referred to foster care as “the new residential schools;” one study by the Institute for Research in Public Policy noted that, “There are approximately 27,000 Aboriginal children younger than 17 in government care — three times the number enrolled in residential schools at the height of their operations, and more than at any time in Canada’s history.”⁴⁵ As the Executive Director explained:

[We need] a person who can help out with child apprehensions, that can advocate for families and let the families know...like we have a David and Goliath situation here in Vancouver because we have a huge organization — two of them, VACFSS and MCFD -- who apprehend children, but we have nobody helping the families to help get them back. I think it’s half a position that’s funded through MCFD to provide that support to the family, which is ridiculous. It just doesn’t

⁴⁴ The Department of Justice web page at http://www.justice.gc.ca/eng/rp-pr/ai-ja/0205/1_1.html cites the following: Michael Jackson, *Locking Up Natives in Canada* (Ottawa: Canadian Bar Association, 1989); Nova Scotia, *Royal Commission on the Donald Marshall, Jr., Prosecution* (Halifax: Royal Commission, 1989); Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg: Queen’s Printer, 1991); Government of Canada, *Aboriginal People and Justice Administration: A Discussion Paper* (Ottawa: Department of Justice Canada, 1991); Law Reform Commission of Canada, *Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice* (Ottawa: Law Reform Commission of Canada, 1991); Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Supply and Services Canada, 1996); Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform, *Legacy of Hope: An Agenda For Change* (Saskatoon: Commission on First Nations and Métis Peoples and Justice Reform, 2004). The Royal Commission on Aboriginal Peoples’s report on justice — *Bridging the Cultural Divide* — cites more than 30 commissions and inquiries that came to the same conclusion.

⁴⁵ See Jessica Ball (2008). *Promoting equity and dignity for Aboriginal children in Canada*. Montréal: Institute for Research on Public Policy. Online at <http://www.irpp.org/en/research/aboriginal-quality-of-life/promoting-equity-and-dignity-for-aboriginal-children-in-canada/>

make sense. Kids end up staying in care a lot longer than they need to rather than having someone help them along through the way.

Related to this would be a desired further development and expansion of Respectful Relationships/Sacred Connections, “so that people aren’t getting arrested for domestic violence offenses, and kids aren’t getting apprehended,” and restoration of the Substance Abuse Management program to replace the expertise lost when the staff member who was trained in that left for other employment.

VATJSS personnel also feel constrained by the original protocol agreements and “Alternative Measures” designation they are under – established 14 years ago with the promise that organization and protocol evolution would evolve as VATJSS’s capacity and infrastructure matured – and see community needs they are well-positioned to address. Along these lines, the Justice Coordinator indicated she has been trying to make inroads in expanding VATJSS’s access to Aboriginal people who have been charged with breaches of their probation orders, and have been finding some receptivity among others in the justice system:

If you look at the structure of VATJSS within the justice side it was very uniform for many years until [recently]. It was only adult and youth court referrals until [another justice worker and I] worked on expanding community referrals. We started thinking outside the box a little bit, started approaching court workers and Crowns and saying, “Hey, what do you think about this?” We did start another project that hasn’t gotten going because there wasn’t enough time. It was to target breaches, people who are repetitively breaching, and bring them to our healing process because obviously what was happening was not working ... where they were willing to accept referrals not under alternative measures but reportable to impact what the sentencing would be. So that’s another thing I hope to get going later.

It is also noteworthy that two persons employed at VATJSS have been trained in writing Gladue reports and have done so on a contract basis to the First Nations Court in New Westminster outside of their involvement at VATJSS. This, too, is an area of obvious potential responsibility for VATJSS that is consistent with their and AJS’s mandate both to better serve the Indigenous community on justice-related issues and reduce the over-representation of Aboriginal people in prisons.

Another area the Justice Coordinator saw potential was in the expansion of their youth involvement into more diversion-based and crime prevention activities that would see them coordinating their efforts with schools:

I wish diversion was used more even pre-justice system with youth. We used to have Amy Powder who was on VPD who was in charge of diversion and we used to get referrals from her, then she took a couple years off and she’s just come back. We were going to be working on one file, but one of the youth wasn’t taking responsibility so it just didn’t end up happening. But I would like to see more diversion. And we’ve been ... and this is the problem with not being able to expand right now: We want to go into the schools, we want to talk to more youth programming instructors, start doing more diversion type things.

Although the focus in AJS is often the offenders, Aboriginal people are often victims as well. Consistent with VATJSS’s desire to contribute to all aspects of the justice system, VATJSS also mentioned the desirability of creating programming in relation to victim services. The

Conservative federal government has recently announced its “victims bill of rights”⁴⁶ and regularly generates funds from perpetrators that ostensibly go to victim services programming. Aboriginal victims should see the benefit of those funds as well.

And of course housing and homelessness continue to be ongoing priorities. One prospective initiative – housing circles – has already been noted, and on a related theme, the Housing Outreach Worker indicated her hope that they might be able to institute mechanisms by which interventions could occur with people currently in housing when they were at risk of becoming homeless:

Another thing I’m trying to do is we’re trying to work with the subsidized housing, and I think I’ll have more of that once I get to vet each one. We want to become one of their...like with Vancouver Native Housing, BC Housing, when they’re going to evict someone they have a tenants relations person who will work with them with the eviction, so we’re trying to be part of that plan so that they can work with us before they get evicted, before they get on the streets, and so we can work to connect our client before they’re ...when they’re just “at risk” instead of absolute. So we’re trying to get that in place as well.

The impediments to these initiatives at some level are the “usual” ones of funding, personnel and space, but also raises issues about VATJSS’s place in the context of the Canadian Justice System.

VATJSS in a Canadian Justice System Context

One of the objectives of AJS that was cited in the first paragraph of this report was its aim “to foster improved responsiveness, fairness, inclusiveness, and effectiveness of the justice system with respect to justice and its administration so as to meet the needs and aspirations of Aboriginal people.” Any evaluation of VATJSS thus needs to consider its relationship to the Criminal Justice System context in which it functions.

An Early Partnership

When VATJSS was first coming into existence, senior officials from AJS were members of the Steering Committee who, along with representatives of Aboriginal, municipal and provincial agencies, departments and governments, came together to negotiate protocol agreements that were to the benefit of all those communities. As Executive Director Christine Martin recalls,⁴⁷

I remember hearing the list of Steering Committee members that met until everything was up and going. That was quite extensive and they had a vested interest in it, and the Aboriginal Caucus also had that vested interest to oversee the day-to-day operations of the organization. So I think that that was the height of all the partnerships that were out there, whether it was provincial, federal or the Aboriginal communities. So I think at that time, you could refer to it as the heyday when we were all working in partnership and trying to find creative solutions and

⁴⁶ See, for example, Sean Fine, “Harper lifts curtain on victims bill of rights.” *The Globe and Mail*, 3 April 2014. Online at <http://www.theglobeandmail.com/news/politics/victims-of-crime-to-have-more-rights-under-new-tory-bill/article17791406/>

⁴⁷ Ms. Martin was a Justice Coordinator in the early days of the program prior to becoming Executive Director.

that's probably when it worked the best, because of all those partnerships. And any kind of bumps we had along the way we'd have the Steering Committee to kind of lean back on and involve if we needed to. And the Aboriginal Caucus kind of took care of the day-to-day stuff, what does the training look like and that sort of thing. A more Aboriginal-specific focus. ... Our job was to see how this implemented in the community and what it would look like and what was the feeling when we went through all of that.

With the federal government involved in these negotiations in consultation with the Aboriginal community as active participants, the protocol agreements of the time, which dealt with the institutional structures in place at the time, created a foundation upon which Aboriginal justice could develop. For VATJSS, that included establishing a protocol agreement with Crown at 222 Main, and as we saw in Figure 1, the next years saw continuing growth in the number of referrals and the breadth of the organization.

The Changing Landscape

Since then, however, the justice landscape has changed. There are now many more AJS-funded programs in existence – 29 in British Columbia alone, and almost 300 across the country – and the provinces, who have constitutional responsibility for the administration of justice, have gone on to develop their own initiatives, many of which have involved creating institutional structures whose jurisdictions overlap with the putative responsibility of VATJSS, i.e., the Aboriginal population of Vancouver. The Executive Director commented on some of those changes and their impacts:

We had quite a few referrals, I think, for the first little while. I think probably for the first maybe 5 to 7 years we had that vested interest and usually our clients came from 222 Main Street. And then shortly after that I think different projects began to emerge as kind of the newest project that was out there. Things like drug court came up. DCC came up – Downtown Community Court. The Aboriginal specific court, the First Nations Court. We had a lot of agencies popping up that were directly affecting our clients.

One implication of all these changes, each of which has brought with it a jurisdictional shift whereby some part of what was a source of referrals from the Provincial Court at 222 Main was now someone else's jurisdiction, is that the original protocol agreements that were negotiated by the Steering Committee and Aboriginal Caucus with the province have become obsolete.

Implications

The contextual conditions outlined above, coupled the funding uncertainties that have plagued AJS-funded programs in the past few years, have clearly affected VATJSS programming in ways that deserve consideration here.

VATJSS's relationship with the DCC has been discussed above and elsewhere,⁴⁸ and there have been positive and negative repercussions for VATJSS.⁴⁹ The negative repercussions associated

⁴⁸ See the Palys *et al* study cited in footnote 15.

with their relationship begins at the point where the jurisdiction of the DCC, which includes particular crime categories occurring within a broadly defined geographical area that includes all of the Vancouver downtown and downtown east side – where many Aboriginal people live – gave the DCC control over who would be referred to VATJSS for programming. A major difficulty with this arrangement is that it leaves the control of who is deemed “appropriate” for Aboriginal programming in the hands of the very system that has been chastized on so many different occasions for its handling of Aboriginal people, and places them within a definitional framework and procedural timetable that does not necessarily accord with how an Aboriginal justice system would proceed.⁵⁰ By offering opportunities to do “sort of” Aboriginal justice it recreates the very problem that the institutionalization of Aboriginal justice via the AJJ was ostensibly put forth to overcome. And so while the DCC’s invitation for VATJSS to have a presence at the DCC to identify and process Aboriginal clients is an accommodating gesture, it is better seen as perhaps the best one can do within the confines of a policy that is neither respectful nor mindful of the Aboriginal community. As the Executive Director explained,

Well it definitely affects...when you think about our volunteer core, for example, that’s the one thing that’s really been difficult to wrap my brain around and trying to balance it with what we have in contracts and what we’re supposed to deliver out there. [That] has been the most challenging part. We have a program like Downtown Community Court where it’s “let’s get everybody rolling with X amount of days and we want everybody to finish our healing plan and come into a place like ours.” Well, we have 3 months to do that! They don’t have 3 months. They have, like, a month, maximum. That’s considered a long time. So...having to fit into that structure and thinking about our volunteers. How do they fit in there? ... Do we compromise who we are because they’re going through a fast process? Are we going to miss out on those people if we don’t figure out a way to adapt to what they’re doing? So that’s been the challenge.

The justice coordinator who now works out of the DCC on a part-time basis does make program referrals off the side of her desk, and in many cases that is the best that can be expected because, as she notes, many of the offenders who go through there are still highly committed to a lifestyle of addictions and unwilling to commit to any process that might interfere. All one can do is plant the seed and hope that, some day, it will grow.

Most of them are quite entrenched in that area and we’ve even, [don’t] like, the idea of giving bus tickets because they go and sell them. The people are often into their addictions. They’re very connected to that core and don’t want to leave. So...as much as possible I keep them in programming there or coming in to do direct things with me. I do that occasionally. For the ones – and I haven’t come across it yet, actually – for the ones that can venture out, we want to encourage them to get further outside of that area. Because I’ve only done it for about a month, I haven’t gotten to that place, but I’m hoping that the idea is to for the ones that can handle the circle process that we’re going to recommend that part of their healing plan is to participate in the circle. And then their healing plan would outlast their plan for the courts but would be a healing process for them.

⁴⁹ This discussion of limitations to the relationship is not intended to cast aspersions on the DCC, who have been extremely cooperative and willing to work for positive accommodations that are mutually beneficial, but rather to question the broader policy framework that works to define and constrain the context and boundaries of their interaction.

⁵⁰ The same might be said for the original protocol agreement with the Provincial Court. However, that agreement was seen as temporary; extending the same terms to the DCC went a step further in institutionalizing it.

For those who are at least receptive, DCC control over the referral process means that more programming is done at the DCC, but not in a way it would occur if it were being done at VATJSS according to VATJSS processes and protocols. For example, the DCC does not allow the possibility of community forums:

Now that I've done DCC, you know, not having a circle it feels different. I don't know whether the accountability feels the same not going through the circle. Working with an Aboriginal face and an Aboriginal person that understands maybe more than a probation officer would definitely impact it. Like it's definitely important that our faces are there for alternative measures, but not having that circle component, that's a powerful thing to go into a circle.

Even the space is un-Aboriginal and the justice coordinator makes clear she is not a part of the DCC in order to try and build rapport with her clientele:

I always outline myself and remind them that I am a contracted person; I am not here under DCC, and your stuff is confidential and it actually stays at my other office, and their whole bodies go [lets out her breath and breathes a simulated sigh of relief] as soon as I say that. But the setting, we're in an interviewing room, similar to lawyers, doctors ...there's nothing Aboriginal...

The repercussions have been felt in other ways as well. Elders and community volunteers want to participate in an Aboriginal justice program, not the DCC, but the shrinking number of referrals from the DCC and Provincial Court led to cancellations of community forums and a reduced number of forums that made it difficult to maintain a cohort of volunteers at the same levels they were when the program began.

Our referrals from 222 Main shrink down to such a small amount. Same thing with the youth. The youth rate has shrunken down, so do we do a whole big training of volunteers and then provide them nothing? That's the challenge we're having to face. We have a core group of volunteers; the majority of them are Elders. When there's bigger circles there's usually an Elder and one at the most volunteer that has stuck out with us for all this time. So that's been the challenge. Now that we have the two year agreement we can take a look at that but how do we measure that when the majority of our staff are coming from DCC? So, in our Respectful Relationships program as well. So that's been our challenge and it really wavered lots from our initial concept of is this how it's going to be, and this is what the circle looks like, and this is all the people that want involved in it. We don't have that luxury any more. They don't send us those cases any more. A lot of them come through DCC. We see that in the stats. So our challenge is do we have a meaningful process that we can offer our volunteers to say we want you to sit down? I mean that's why we're so excited about if we have the housing piece along with the justice piece, then we can provide some meaningful volunteerism that we can say, "you can sit in on these circles because we know we're going to have housing..."

And finally, the above plus uncertainties in AJS funding that have occurred over the last few years also make it difficult to maintain staff over time. Those who do work at VATJSS are highly motivated and highly valued, but the revolving funding door makes it difficult to think of being in Aboriginal justice as a career when thoughts of children and mortgage payments come into a person's life. As the Executive Director noted,

I'm so grateful for the staff that I do have. Unfortunately in the Aboriginal community we're probably on the higher end of the pay scale but that's something that I ensure my staff get first their raises at 2% per year and I incorporate that into any new funding increments that we have.

We have to be creative in how we sustain that. What other funding can we look at? Do we have admin dollars that we can use to retain the staff? A lot of the perks of the job are knowing that our program is probably one of the most sought after programs in terms of what you can do, how you can help. It has a high profile and so it allows our staff to stay here knowing that they are in an organization that really reflects the values and helps anybody who walks through the door.

The challenges for the further promotion and development of Aboriginal justice continue.

Discussion and Conclusions

This project complements the national evaluation done by AJS in 2010-11 and published in 2011.⁵¹ That evaluation revealed positive results in many domains – reduced recidivism, cost savings, community development – to name three. The current study focussed more on life on the ground in the day-to-day management of one Aboriginal justice organization in a major Canadian city, guided by questions about how the program came about (the past), how it achieved its objectives or was impeded from them (the present), and what they aspired to do with and for their community if they had the resources to do so (the future).

Past

In retrospect, the die was cast for VATJSS when the Aboriginal community of Vancouver trusted what they were told by federal and provincial members of the Steering Committee in 1998-1999, i.e., that their placement under “Alternative Measures” and limitations with respect to the charges and offenders they would be able to deal with were the first step in what would be an evolving relationship. In the eyes of the Aboriginal community, this caution was reasonable because they were embarking on a new venture – taking historical traditions of Aboriginal justice processes and adapting them to life in a cosmopolitan Canadian city⁵² – that was best developed slowly. The metaphor one heard at the time was that one must walk before one can run, and the original protocol agreements negotiated by a Steering Committee comprising representatives from the Aboriginal community and federal, provincial and municipal governments reflected that agreed upon initial pace.

That choice also placed the Aboriginal community at a disadvantage, however, because it was now dependent on other agencies within the justice community to send it referrals. This in turn made the ebb and flow of referrals to VATJSS dependent on individual caprice, depending on each resident gatekeeper’s knowledge of and commitment to the program. As various individuals within the Canadian justice community who had participated in the Steering Committee and were motivated to see the program succeed departed because of changed responsibilities or advancement, the new individuals in their position might or might not have heard about the program, and might or might not share the motivation that the previous

⁵¹ See footnote 1.

⁵² Both the Aboriginal and non-Aboriginal populations in Vancouver are very diverse. With respect to Aboriginal people, almost a third of Canada’s 600 First Nations are in BC, and many people from these Nations come to Vancouver, as do many from other parts of Canada. This poses considerable challenges when it comes to deciding how justice services will be designed and delivered .

incumbent had exhibited. The onus was always on the Aboriginal community to come and re-introduce themselves, to inform a new generation of practitioners about their work, and to win their favour for referrals. As former Executive Director Barry Warhaft recalled,

I think that it was an Alternative type of program to the Crown. So while they had a table where people came from different aspects of the criminal justice system and met somewhat regularly about the business of the day or the month, we never really got a seat there. In retrospect, we probably should have pushed harder, but every time we went, we were always given the sense that things would change, that referrals would increase, and that people knew of us. The first meeting would be "Oh we didn't even know you were there" type of thing. So now they knew we were there.

From his perspective, VATJSS and Aboriginal justice often was treated by mainstream justice practitioners as an adjunct to the "real" justice system that was run by lawyers and judges in courts. Aboriginal people might be invited as guests, but would never be considered for membership:

[The justice system is an] inherently conservative entity with very little will to take on what they perceive as anything but modest risk. When I think back to it, because this conversation has brought it up, what would it have done, if we were more forceful? I actually think maybe not, nothing could have happened, because they were so exclusionary. This is our club. And we'll invite you to be a guest some time to speak to us and remind us what it is you do, and make your case, but there was no follow up. There was no channel set up to continue to check in. We had our day, and it took us three months to get that meeting. "Okay. Thank you. We'll make the information you provided to us more widely known." And then a few more months would go by, and, "Maybe if you placed someone here?"

For the former Executive Director, these conditions also placed inevitable limitations on how much could be accomplished, and suggested that British Columbia, with its constitutional responsibility for the administration of justice, had no intention of sharing that responsibility in any meaningful way:

You're going to be able to continue to do something good because you have good people who are attracted to it working hard, but you'll never be able to get to the core of what you intended to do. And those young people come in, and they bring their individual talents, and they help shape the program, and then they go. And then the next person comes in. So you've got that aspect happening, and then you have the funding demands too. Of how you have to count. It becomes something completely different than what it was intended. Not that it's not still getting to some of the same population, but it's not going to get a demonstrable effect, you're never going to be able to prove yourself. I think the Toronto program has proven itself. They've shown that they have lowered recidivism rates. They've taken on people who otherwise ... I don't know how it's evolved now .. but even way back when, that would have otherwise, maybe spent small amounts of time in incarceration. I don't think, well not when I was there, VATJSS never really got any type of referral that really challenged the powers that be, that really demonstrated a true "giving up" and seeing what happens.

How long would it take before VATJSS would be recognized as an integral and mature part of the Aboriginal community landscape and see an evolution in its jurisdiction and responsibility?

Present

Since those initial days, VATJSS, along with other programs in the country that operate under the banner of “Aboriginal Justice” and are funded all or in part through AJS have indeed matured and a substantial infrastructure – both in human and physical terms – has been built. The Executive Director and staff at VATJSS have institutionalized some integral program initiatives and developed others that the community they serve has brought to their attention and would have criminogenic consequences if left unattended. In concert with these changes, the interviews revealed a number of ways that AJS has been playing its part to live up to its initial promises and objectives. For example, the AJS Capacity Building fund has helped to build infrastructure; AJS has adapted to the flexibility that organizations such as VATJSS have required in order to continue meeting the “justice” needs of the community in ways that the community itself has defined; and AJS personnel also have helped promote and provide opportunities for staff to take training initiatives such as Respectful Relationships and the Substance Abuse Management programs.

During the time that VATJSS has been growing and maturing, the justice system in BC has been evolving without any particular regard for VATJSS, perhaps in part because there was no longer any Steering Committee, and no longer any Aboriginal Caucus, who had direct connections to individuals and offices who had the power to make larger policy decisions involving access and jurisdiction. First the Federal Drug Court, then the downtown Community Court, and then the First Nations Court in New Westminster – all of whom had implications for VATJSS and the community it served – entered the scene.

Three aspects of these newer entries are noteworthy. First is that, to the extent these initiatives deal with Aboriginal people, in many cases there has not been adequate consultation with existing organizations such as VATJSS to coordinate their efforts in partnership and thereby both promote Aboriginal justice and make most efficient use of resources. Second is that, because they are provincial initiatives, they came with all the provincial bells and whistles and vested interest for success; even if touted as “experimental” programs, they came with adequate funding and jurisdiction to do the job. And third, their existence has made the original protocol agreements under which VATJSS’s protocol agreements obsolete, as senior officials at AJS have not to my knowledge sought to renegotiate their terms to take into account provincial developments and the maturation of VATJSS.

Lack of Consultation

While the original creation of VATJSS can be seen as a positive example of extensive consultation on an issue that affects the Aboriginal community, one instance of inadequate consultation that was mentioned during the interviews involved the advent of the First Nations Court in New Westminster. No one in the Indigenous community appears to doubt that the creation of a First Nations Court was a welcome initiative, but it appears to have been done without any input or coordination of Aboriginal justice programs that have more extensive connections to their respective communities, and where a more symbiotic connection by

viewing this as a community partnership could have been made. As the Executive Director explained in reference to this provincial initiative,

I think in their mindset they thought that we have to develop something that's in our playing field ... that kind of looks Aboriginal. But I think they missed the ballpark on it by not having it led by the Aboriginal community. I know First Nations Court is somewhat successful from what I understand, but how successful can you be if you're not having your pulse to the community; having those partnerships that are really important in order to complete their what they call it – their disposition – that's what they call it. But not having the really important partnerships that need to be in place, like us, ... I found out that First Nations court existed from the UBC First Nations Legal Clinic – from one of the lawyers. And I said, "Oh no, there's no First Nations court. You must be mistaken." That's how I found out about First Nations court. They said, "Oh yes, it exists" and I was a little bit shocked. What a missed opportunity that was. We could've worked in partnership and there were some cases where we may not have been able to take them; could have said, "listen, let's not send them back to the regular system. Let's send them to the First Nations court." But what ended up happening is that we ended up competing for the same clients per se. It's just a matter of who sends who where. So that's kind of the shift that happened. And we had a lot of key people in our steering committee that really enjoyed that this program was successful. The head Crown Counsel at the time was quite instrumental in making sure that all cases came to here.

Clearly there were many lost opportunities here. As the Executive Director notes, one of them was simply for Aboriginal justice programs to be involved in the supervision of offenders who are serving their dispositions in the community. Instead of being sent out as individuals expected to meet the conditions of their release, imagine the opportunities that would exist for the Aboriginal justice program in each offender's community to participate in healing circles, to be welcomed in very concrete terms to their community and to be able to share their successes and failures under care and supervision. Yet another lost opportunity was the one this would have provided for Aboriginal justice programs such as VATJSS to be involved in the preparation of Gladue reports as part of their ongoing responsibility.

All the Bells and Whistles

Even in instances where some consultation has occurred – such as when the Downtown Community Court (DCC) was being proposed and a team involved in its proposal came to venues such as the Vancouver Aboriginal Friendship Centre and held a public forum – it appears all the attention thereafter was on providing the DCC with all it needed, while forgetting about its promises in relation to VATJSS.

The capital investment and jurisdictional protocol associated with the development of the DCC is noteworthy. A capital investment of \$5.444 million created the physical structure on Gore Street, while operating funding devoted to the first year of operation alone was \$4.379 million.⁵³ And while the DCC by its nature would be taking away cases from the Provincial Court at 222 Main Street, it was not set up as a process of "referrals" whereby the Crown at 222 Main would decide which of the cases would be appropriate for referral to the DCC, thereby making the DCC's caseload dependent on the judgment of others, who might or might not think that

⁵³ http://www2.news.gov.bc.ca/news_releases_2005-2009/2008OTP0218-001343-Attachment1.htm

the approach to justice advocated by the DCC was a good idea. Instead, the protocol agreement that governs the facility outlined a specific jurisdiction in which all cases of a specific type would automatically be sent to the DCC, who would decide for themselves which cases were appropriate and which might be referred elsewhere.⁵⁴

A Need to Renegotiate Umbrella Agreements

It has been fifteen years since the protocol agreements that resulted in the creation of VATJSS were negotiated, and the legal landscape in BC has changed. Developments at the provincial level have made VATJSS's original protocol obsolete in many respects. Urban programs such as VATJSS are at a distinct disadvantage in such cases because the clear governance structure and more homogenous cultural traditions that one would find in a reserve context do not exist in the city. Vancouver's Indigenous population is at least as cosmopolitan and culturally diverse as its non-Indigenous population, which makes it uniquely challenging to do Aboriginal justice.

If I may share a personal story, I learned many years ago in one of my first summer jobs as a graduate student that politicians and the civil service operate on the basis of an implicit set of norms about who may communicate with whom. I was a mere Research Coordinator at the time, working on a project for the Research Director of a small Ministry in the Manitoba Government. At one point I needed information from another Ministry and naively sought to contact an Assistant Deputy Minister (ADM) who would have been the appropriate source of that information, but received no immediate reply. It did not take long, however, for a chain of communication to occur in which the ADM from that other Ministry contacted the ADM of my Ministry to inform him to inform my Research Director supervisor to inform me that Research Assistants do not initiate interactions or make requests of Assistant Deputy Ministers, and especially ADMs of other Ministries, no matter how legitimate their request. The "proper" way for my request to proceed, I quickly learned, was that I should have followed that communication trail in reverse, i.e., I should have asked my supervisor the Research Director to ask the ADM in our Ministry to make an official request to the ADM in the other Ministry for the information.

There are two implications to that story that are relevant to our consideration of VATJSS. The first is that there are some protocol agreements that the Executive Director of VATJSS has it within her power to negotiate, and individuals with whom she can negotiate those agreements. An example would be the relation that might exist between her and the Director of the Downtown Community Court, as was evident in 2011 when Ms. Martin and then-Director of the DCC Allan Shoom agreed that VATJSS would have a presence at the DCC, and that the DCC would make every effort to resuscitate the referral process, which it has. But a second implication is that there are other protocol agreements that Ms. Martin cannot re-negotiate because she does not have access to those in the Provincial Government who have it within their power to authorize the changes that would need to be made for her the Vancouver program to expand in areas that the community is now ready to undertake. While a First Nation

⁵⁴ http://www.criminaljusticereform.gov.bc.ca/en/justice_reform_projects/community_court/how_it_works/jurisdiction/index.html

might be able to do so, because of the absence of a similar Aboriginal governance structure in Vancouver, if a new agreement is to be negotiated with the Province of BC over the administration of justice, it may require a contemporary reincarnation of the Steering Committee that gave birth to VATJSS fourteen years ago.

In the absence of such a re-negotiation, it appears the Province, at least in one jurisdiction,⁵⁵ is attempting to impose a very limited view of what Aboriginal Justice can look like in British Columbia. For example, the Executive Director recounted the following:

We went to our convention that we had last year with all of our AJS workers and one of the new programs were there and we had an afternoon where it was just our programs talking and she was saying, "Well, it's not so much the Feds that are telling us what to do, it's mainly the Province and this one particular person." They were trying to tell him, "you can't do this and you can't do that." And I said, "well, no, you get your community to define what it is that they want to do with that piece whether it's police-led, or community-led, or Elder-led. You guys figure out what works for you." ... Because they were trying to say, well there's RCMP. We'll bring in RCMP training for you guys. And they were thinking: Is this the only training? In fact, I was saying, "you should do a site visit to the Nisga'a country because they're pretty well the same. They have a pretty big nation that they deal with. The Nisga'a base this on their house system and it sounds like you guys are set up the same so ask for a site visit up there and then get an understanding of what they need to do to get that to happen." I don't think they necessarily like us talking to them because it's like, well, no, assert your rights. You're the one that has to be answerable to your community after this is all set up. I don't agree with bringing in the RCMP with the RCMP uniform saying, "Ok, let's all sit in a circle and let's all talk about what happened." Ahhh, there's something wrong with this picture.

Such an approach reflects neither the needs and desires of Aboriginal communities nor the AJS mandate "to foster improved responsiveness, fairness, inclusiveness, and effectiveness of the justice system with respect to justice and its administration so as to meet the needs and aspirations of Aboriginal people."

Future

At this time, VATJSS is an effective and capable organization that sees a dozen opportunities it is ready and willing to develop the infrastructure to pursue – working on K-files; providing victim services; establishing an Aboriginal probation centre; writing Gladue reports; engaging in housing circles; establishing a child apprehension ombudsperson. The foundation is there but the funding and negotiated agreements that would allow that to happen are not.

⁵⁵ The individual in the story attributes the imposition to one particular individual, so it is difficult to say to what extent the individual was putting forth a personal point of view or setting out current policy. That said, the idea of someone trying to impose an RCMP-defined interpretation of Maori family group conferencing that has been denounced by Maori justice scholars has been documented in the literature. See Ted Palys & Wenona Victor (2007). "Getting to a Better Place": *Qwi:qwelstóm*, the Stó:lō and Self-Determination. In Law Commission of Canada (Ed.) *Indigenous Legal Traditions*. Vancouver: UBC Press, pp.12-39; Juan Tauri (2004). *Conferencing, Indigenisation and Orientalism: A Critical Commentary on Recent State Responses to Indigenous Offending*. Keynote Address to the *Qwi:qwelstóm* gathering, "Bringing justice back to the people," held in Mission, BC, 22-24 March. Online at <http://www.sfu.ca/~palys/Tauri2004.pdf>

Former Executive Director of VATJSS Barry Warhaft once told me about a conversation he had years ago with Jonathan Rudin, Executive Director of Toronto Aboriginal Legal Services (TALS). Mr. Rudin was recounting one of his early meetings with Crown, when he asked for an individual with an extensive criminal record to be referred to their program. The Crown balked at the prospect and noted that the offender had 25 prior convictions and thus was not eligible for referral. Rudin stated, “So ... 26th time lucky, eh?” and began to leave the office. The Crown called him back and referred the file. The interchange underlines what Commissions of Inquiry have stated and re-stated for decades and that was part of the original *raison d’être* for AJS – the Canadian justice system has failed Aboriginal people at every turn, and while it will be a challenge to do better – and the AJS evaluation published in 2011 suggests that they *are* doing better at lower cost – Aboriginal people providing justice services to Aboriginal people can surely do no worse.

The AJS has done a remarkable job over the years in helping build both a personal and physical infrastructure for Aboriginal justice in Canada; it should now consider facilitating the longer-term institutionalization and elaboration of those programs in ways that reflect the priorities of the diverse individual communities that have and might wish to establish such programs.

Recommendations

The Department of Justice has long recognized that the mainstream justice system has, in its words, “failed Aboriginal people at every turn.” The Aboriginal Justice Strategy offered a way for Aboriginal people “to contribute to decreasing the rates of crime and victimization in Aboriginal communities operating AJS programs; to assist Aboriginal communities to take greater responsibility for justice administration; to provide better and more timely information about community justice programs funded by the AJS; and to reflect and include relevant Aboriginal cultural values in Canadian justice administration.”⁵⁶

The UN *Declaration on the Rights of Indigenous Peoples*, which was passed by the General Assembly in 2007, affirms the right of Indigenous peoples to develop legal institutions and juridical systems consistent with their traditions and international human rights standards. Canada expressed its support for the *Declaration* as an “aspirational document” in 2010. More recently, James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples, pointed specifically to the “notable effort” the AJS was playing in providing Aboriginal people with opportunities to develop culturally appropriate alternatives to the mainstream justice system, while also noting the problem of over-representation of Aboriginal people behind bars continues. His report recommended that,

Federal, provincial and aboriginal governments should improve upon their coordination in the delivery of services. Continued efforts should be made to support indigenous-run and culturally appropriate social and judicial services, and to strengthen and expand programs that have already demonstrated successes.⁵⁷

⁵⁶ See *AJS Statistical Overview*.

⁵⁷ <http://unsr.jamesanaya.org/docs/countries/2014-report-canada-a-hrc-27-52-add-2-en-auversion.pdf>

VATJSS would appear to be one of those “demonstrated successes.” On that basis, I encourage VATJSS, and Canada – via the AJS – to consider the following recommendations:

For VATJSS

VATJSS has now been in operation for 14 years and every indication is that it has accomplished its original objectives well within the confines within which it has been allowed to operate. At this juncture of its history, I recommend that VATJSS consider pursuing funding for the following activities:

- **Expanding Data Management Systems.** The data compilation software that VATJSS currently uses has not changed since the organization began accepting clients in 2000. While the basic information they maintain for themselves and submit to AJS is still relevant, VATJSS’s range of operations has increased significantly and their data management systems should be expanded to reflect that enhanced range of and activity. For the current evaluation we were able to be reasonably comprehensive in our analysis of the full range of VATJSS’s program activities by supplementing the computerized data base with information from hard-copy files and gleaned through interviews with current and former personnel, future evaluations and better yet a routinization of ongoing evaluation would be better served by an expanded data base that reflects VATJSS’s current range of activity and can have added modules when and if areas of program expansion are implemented.
- **A New Generation of Broad Community Engagement.** While VATJSS has clearly lived up to the aspirations that its founders had for a community-driven program that would develop a human and material infrastructure for proficient delivery of Aboriginal justice services, the organization could well be considered at a prospective turning point in the range of services it is capable of offering or incorporating. In the event AJS were to be open to the recommendations that apply to AJS that are outlined below, it would be highly appropriate for VATJSS to engage more systematically a broad process of community consultation that parallels the processes that led to its initial development in the late 1990s. VATJSS has lived in its Alternative Measures box for too long; it should be released to develop further and be led by the community in the way that it dies so.

For AJS

The AJS has played a crucial role helping to develop and promote Aboriginal justice and build infrastructure across the country, and the national evaluation of 2010-2011 revealed that, at the national level, these programs reduced recidivism, created cost savings, and promoted community development. I encourage Canada via the AJS to take the next steps, which might involve the following:

- **Make a long term commitment to Aboriginal justice in Canada.** Thanks to more than two decades of support and clear Aboriginal interest as evidenced by the proliferation of programs, the infrastructure is there now, but the long term commitment that would allow a new generation of Aboriginal youth to envision themselves having a career in the justice area does not yet exist. Indeed, funding over the last few years has been

quite precarious, with AJS programs on some occasions wondering whether their AJS funding would be there even a month or two down the road. Law Schools and Criminology programs come into existence to professionalize a population when they know that students who come there for 3 or 4 years will still have a justice system to work for when they graduate. Program development is also impeded when long-term planning is constrained. Aboriginal students and others who are interested in contributing to and developing Aboriginal justice in its contemporary context should be able to enjoy that same option.

- **Allow for variation in program funding.** In the interests of living up to its mandates “to allow Aboriginal people the opportunity to assume greater responsibility for the administration of justice in their communities;” and “to foster improved responsiveness, fairness, inclusiveness, and effectiveness of the justice system with respect to justice and its administration so as to meet the needs and aspirations of Aboriginal people,” AJS should consider identifying a small set of projects among mature programs who have shown they are ready for further expansion – VATJSS certainly being one of these – for more extensive funding on a proposal basis.
- **Negotiate a new generation of protocol agreements involving VATJSS.** This might follow the Steering Committee/Aboriginal Caucus model that created VATJSS, thereby ensuring that all relevant levels of government and the Aboriginal community’s interests are represented in the discussions, and hence that implementation of any agreement can be anticipated.
- **Base new protocol agreements on the notion of default Aboriginal jurisdiction** in the same manner that, when the DCC was set up, its jurisdiction was defined and it could then choose to whom its referrals might go. If there is a fundamental right that any People has, surely that should be the one that defines who their “we” includes. Any “Aboriginal” person should have access to Aboriginal justice processes, and while those terms of reference will have to be negotiated, they should be negotiated under conditions of mutual power and respect. A key condition of any negotiated agreement should be that any Aboriginal individual will go first to an Aboriginal justice program, who may then choose to refer to other agencies if appropriate.
- **Provide funding adequate to the task.** As programs develop, the ideal in the local case would be for the Vancouver, BC and federal governments to set aside a substantial facility with adequate operating budget that would become an Aboriginal legal centre for Vancouver.

As a final remark, I will remind the reader that the findings and recommendations arising from this report pertain to VATJSS and its unique history, community and context. Although many of the issues raised may resonate in other community programs funded by AJS, the extent to which other programs share VATJSS’s experiences, interests and aspirations is something those other communities need to determine for themselves.