

**CONFRONTING THE PAST AND BUILDING A FUTURE:
PEACEMAKING CIRCLES IN A NORTHERN CANADIAN COMMUNITY**

by

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ABSTRACT

The most significant changes in the administration of youth justice, based on a transformative philosophy, are occurring in First Nations communities, in response to a history of oppression, near-genocide, culture conflict with, and proven ineffectiveness of the Western criminal justice system. In efforts to reassert power and take responsibility for local issues, address crime and victimization, build community, revive traditional values, increase community capacity and self-sufficiency, create a healthier reality for future generations, and prepare for eventual self-government, one primarily First Nations community in the Yukon has developed and implemented peacemaking circles.

This thesis is a result of field research conducted in this community. Based on participant observation and interviews with community justice practitioners, community members, justice personnel, young offenders and victims who have experienced peacemaking circles, it explores several individual, community, and system level challenges which may affect the potential of circles to accomplish objectives. The initiative operates within a community and political environment that is plagued by misinformation, skepticism, mistrust, resistance, apathy, dysfunctionality, power imbalances, state paternalism, and minimal ideological and financial support. Project evaluations cannot be imposed from the outside, before these issues have the opportunity to be addressed, or before the initiative has sufficient time to reach long-term objectives. Failure to address these and other issues could be devastating to the entire restorative justice movement, and doom communities to continued intervention by and subordination to an ineffective and oppressive retributive justice system.

Logical extensions of the voices of this community's members provide direction to the First Nation, the Community Justice Committee, the community, and the government as interdependent stakeholders who all share responsibility for the success of community justice. Community healing and development cannot occur without involving young people, strengthening connections between youth and adults, reviving cultural teachings, addressing the root causes of resistance and apathy, engendering support, allocating resources, sharing power, and relinquishing control. Demonstrated capacity to reassert power and take responsibility for local issues ideally prepares the First Nation for self-government, and rightfully increases its long overdue status as an equal partner and teacher to the Western justice system.

DEDICATION

To Wounded Eagle,
Who, despite the debilitating struggles he has survived,
Has the spirit, strength, and honour to one day soar,
And lead his people to conquer the past,
And live a happy and healthy future.

QUOTATION

Never doubt that a small group of thoughtful,
committed citizens can change the world.
Indeed, it is the only thing that ever has.

- Margaret Mead

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**CHAPTER ONE:
THE SOCIAL CRISIS OF YOUTH JUSTICE
AND POLITICAL RESPONSE TO YOUTH CRIME IN CANADA**

...[**I**]f the justice process looks at the forces in a young person's life in a wider, supportive and restorative way, there is a better chance of helping him or her stay out of trouble in the future....The Western world's general determination to "get tougher" instead seems to be taking us even further away from the goal of creating respectful and peaceful young adults (Ross 1996: 23).

The Crisis

There is currently a crisis in youth justice in Canada¹. Public opinion surveys, media reports, and anecdotal accounts reflect a widespread view that the seriousness of youth crime has increased, youth violence has risen, the youth justice system is not working, judges are not tough enough, and the Young Offenders Act (YOA) is to blame (Lilles 1995; Canadian Centre for Justice Statistics 1999). The "underlying intolerance towards young offenders is aggravated by the expectation that somehow punishment will solve the problem" (Lilles 1995: 83). Politicians and political parties have taken advantage of the mistaken public perception that youth crime is out of control and

¹ Webster's NewWorld Dictionary (1984) defines a crisis as "a turning point in the course of anything; decisive or crucial time, stage or event" (336). In addition to the fact that Canada incarcerates more youth per capita than any other developed nation, the proposed Youth Criminal Justice Act insinuates that the future of youth justice in Canada will depend largely on the provisions and philosophy inherent in this piece of legislation. Cayley (1998) asserts that the crisis in punitive philosophy and sanctions is that they foster what they are designed to curb. Bazemore and Umbreit (1997) explain that the youth justice system is facing a crisis of confidence. Public fears and frustrations could yield the demise of a system that is designed to respond to youth crime. Canadian victims, offenders, and community members are caught in a downward spiral, whereby the fear caused by crime leads to weakened community bonds, and increased isolation and distrust among people, which weakens the power of community disapproval, and perpetuates the continuation of crime. In response to the most sensationalist news stories, public policy takes a "war on crime" approach, thereby targeting the wrong problem with ineffective solutions (<http://www.cerj.org/problems/crisis.html>).

dispositions are too lenient². Legislators are subsequently pressured to increase penalties for young offenders, and when punitive legislation does not address the problem, frustration among the public is increased, and increasingly punitive measures are instituted³. Judges perceive that the public has an increased fear of crime, and they are persistently accused by the media, the public, and politicians to be “too soft” in sentencing; thus, they feel compelled to order periods of incarceration for more than one third of all youth who are sentenced in their courtrooms (Lilles 1995)⁴.

The lack of congruence between what is considered mainstream public opinion and the realities of youth crime has serious negative implications regarding the formation of youth justice policy in Canada. It has led to political pressure and legislative reforms which advocate harsher penalties and increased retribution for young offenders (Griffiths and Corrado 1999). In fact, recent evidence indicates that youth crime is not out of control (Doob, Marinos and Varma 1995)⁵. Recent youth crime rates indicate that violent

² In reality, youths convicted of criminal offences are more likely than adults to be imprisoned for the same crimes, and for longer periods of time (Cayley 1998; Canadian Centre for Justice Statistics 1999).

³ Lilles (1995) argues that “while the Young Offenders Act can be criticized, it is not for being too lenient, but for providing a statutory framework which permits and encourages the processing of too many young people through the formal justice system and for permitting a disproportionate use of custody in sentencing” (74). Canada’s rate of youth diversion from the courts is only 25 percent, whereas the United States diverts 53 percent of youth cases, Great Britain diverts 57 percent, and New Zealand diverts 61 percent (Department of Justice 1998). In 1995-96, 15 percent of all youth found guilty of an offence were sentenced to secure custody, and 19 percent were sent to open custody. The two most common types of custodial cases (violations of the Criminal Code) were property-related (break and enter (15 percent) and theft under \$5000 (9 percent)); however, administrative offences accounted for over one-third of custody cases (e.g., failure to comply with a court disposition (20 percent), failure to appear (10 percent), and escaping custody (6 percent)). Youth who failed to comply with court disposition (e.g., breach of probation) had a 48 percent chance of being sent to custody (Canadian Centre for Justice Statistics 1999).

⁴ Forty-eight per cent of youth custodial dispositions are for property offences (Lilles 1995).

⁵ In 1993, it was similar to what it was 10 years prior (Lilles 1995). This reality supports the argument that custody has not reduced youth crime rates; rather, increases in incarceration are due to the YOA. In the first five years under the YOA, Canadians witnessed a dramatic rise in the number of short custodial sentences (op cit). For a full discussion on the “realities” of youth crime, see Doob, Marinos, and Varma (1995). See also Schissel (1997) for a critical discussion on the implications of media distortions and socially constructed perceptions of the nature of youth crime on moral panics, public policy, legislation, and the perpetuation of crime.

and non-violent youth crime is actually decreasing⁶, and that youth are not responsible for the majority of violent crimes⁷. Research actually suggests that public fear of crime does not result in greater demands for punishment (Ouimet and Coyle 1991 in Lilles 1995), as many citizens realize that harsher penalties will not address the youth crime problem (Sessar 1999)⁸. If youth justice policy and legislation are created based on misinformation about the nature and extent of youth crime in Canada, the underlying root causes of crime will be left unaddressed. Youth crime will continue to flourish, and youth will remain alienated from society, causing further crime (White 1999). The public will be left more frustrated with the ineffectiveness of legislation to solve the crime problem, and remain helpless, when they could be part of the solution. By ignoring the real problems and using the wrong solutions, such as targeting perceptions by tinkering with legislation or imposing harsher penalties, youth crime will continue (and perhaps increase), reality will remain unchanged, the public will remain misinformed, and

⁶ The volume of cases processed in youth courts in Canada in 1997-98 was essentially unchanged from the previous year; however, (adjusting for the effects of growth in the youth population) the rate of youth court cases per 10 000 youths declined by 9 percent from 1992-93 to 1997-98. In each of the years from 1992-93 to 1997-98, the rate of property crime cases decreased annually, dropping 25 percent over this period. From 1987 to 1997, the rate of all Criminal Code offences committed by youth decreased from 4 764 (per 100 000 youths) to 4 569. While the rate of violent crime cases in court increased by 4 percent since 1992-93 (except from 1996 to 1997, the violent youth crime rate dropped by 2 percent), only one in five cases processed in youth court involved violent crimes, and about one half of violent crime cases were common assaults (see Doob, Marinos and Varma (1995) for further support of this argument). Murder, manslaughter and attempted murder cases together accounted for only 1 percent of all violent crime cases heard in youth courts (Canadian Centre for Justice Statistics 1999).

⁷ Adults commit 86 percent of violent crime in Canada, including the more serious and violent crimes (Department of Justice Canada 1993), and in 1991, youth committed only 6 percent of the total homicides (op cit). Over the past ten years, the homicide rate for youths accused has remained relatively stable. From 1987 to 1996, an average of 50 youths were accused of homicide each year, representing 9 percent of all persons accused of homicide (Canadian Centre for Justice Statistics 1999).

⁸ The 1999 General Social Survey (GSS) found that, on the whole, Canadians favoured alternatives to prison for first-time offenders convicted of either breaking and entering or minor assault. For repeat offenders, almost half of the respondents opted for alternatives to jail for young persons. Fewer survey respondents favoured a jail sentence for young offenders than they did for adults (Canadian Centre for Justice Statistics 1999).

constructive dialogue on more promising and productive alternative or community-based responses to youth crime will not occur (Lilles 1995; Griffiths and Corrado 1999).

Merely creating new legislation is an attempt to cope with perceived negative public opinion. If no program resources are provided and no effective strategy to promote public understanding are put in place, it amounts to putting a fancy label on the same basic product. Inevitably, this will lead to further public disgruntlement when no miraculous improvement occurs, resulting in yet more pressures for more punitive measures...[A]ny change in the YOA should be accompanied by specific funding provisions for a public education component (Canadian Criminal Justice Association 1998: 10).

Canada boasts the highest youth incarceration rate in the developed world, and youth are incarcerated at rates higher than the adult population (Lilles 1995)⁹. Due to exorbitant costs associated with youth custody, and the ineffectiveness of custody for most youth¹⁰, the Canadian youth justice system is finally realizing that youth custody is ineffective in addressing the healing needs of most youth in conflict and, in turn, reducing future conflict with the law.

Punitive sanctions stigmatize, dehumanize, and isolate the offender, which has a counter-deterrent effect by minimizing the potential of the young person to regain respect for him/herself and the community. Punishment not only detracts from reparative and

⁹ Canada's rate of incarceration for youth is 223 per 100 000 youth population of 6.8 million (Correctional Services Canada 1993). This translates into a custody rate for youth aged 12 to 17 of well over 600 per 100 000 youth, which is four times higher than that for Canadian adults. The rate of adult detention was reported as 154 per 100 000, based on an adult population of 20.6 million (op cit). One half of these youth custodial dispositions were for property offences, and only 17% were a result of convictions for violence (Lilles 1995).

¹⁰ American experience suggests that harsh penalties may in fact increase crime rates. Canadian research shows no correlation between severity of sentence and deterrence of youthful offending (Leschied and Vark 1989 in Lilles 1995). A study by the New South Wales Office of Juvenile Justice found that many youth offenders re-entered detention centres on violent offences after serving custodial terms for non-violent offending (Cain 1993 in Lilles 1995). The potential deterrent effect of jail is also reduced once the young person is exposed to custody. Youth are introduced to other, more experienced offenders, and the most basic common denominator of their experience and conversation is their offending behaviour and techniques. Short periods of incarceration also do not allow for treatment or counselling to take place (Lilles 1995). And once youth know they can handle a custodial experience, they are less apt to fear it in the future.

rehabilitative goals, but it also encourages offenders to focus on themselves (and their own feelings of victimization), rather than the person they have harmed. Bazemore (1999) argues that it may also undermine self-restraint by attenuating natural feelings of shame and a sense of morality, while weakening community bonds by damaging family, peer, and other adult relationships.

“Sending young people to jail is counterproductive to appropriate socialization. Their socialization occurs in the family, at school, and in the workplace” (Lilles 1995). However, certain youth have dysfunctional families, do poorly in school (or are expelled), and due to the nature of the economy, cannot find employment. Research indicates that low family income, school failure, and poor parenting are strong predictors of delinquency (Farrington 1994 in Lilles 1995). Attacking these problems through effective prevention programs and by incorporating a relational rehabilitation model of justice (Bazemore 1999) would lead to greater success than increased penalties and detention facility construction (Polk 1993 in Lilles 1995).

Genuine attempts at targeting the root causes of delinquency and creating better living conditions for young people by developing communities are required to prevent offending behaviour (White 1999). Elikann (1999) argues that the “war on children” is a convenient escape for politicians and adults who are unwilling to take responsibility for and address the real causes of youth crime: the social acceptance of violence in the media, the disintegration of the family unit, the lack of positive role models, poverty, poor health and educational systems, neglect, and general social dysfunctions and disenfranchisement (which are manifested in young people’s “deviant” behaviours).

Responding to the Crisis: Restorative Justice

Despite the persistent retributive nature of the Canadian criminal justice system, the current trend toward a crime control model of youth justice, and widespread public concern with what are perceived to be increasing rates of serious youth crime, restorative justice¹¹ is quickly becoming more acceptable in mainstream youth justice processing (Griffiths and Corrado 1999).

According to some restorative justice advocates, restorative justice appears to be an attempt to respond to crisis in the current retributive system such as the soaring costs of punishment, conflict between policy focus on punishment and rehabilitation, detachment from communities and lack of integration with social justice issues, and victim frustration and alienation (Bazemore and Schiff 1996: n.p.).

While the primary focus of restorative justice is to repair the harm caused by crime and restore harmony to relationships (Zehr 1990), part of the harm-reparation process involves preventing crime in the future. This points toward healing for the victim, the offender, and the community, and addressing underlying issues faced by the young person in particular. A *relational* approach to rehabilitation “links crime to a breakdown in social relationships and hence prescribes a reintegrative response to crime focused on attempts to repair, rebuild, and enhance bonds or ties between young offenders and their communities” (Bazemore 1999: 155).

¹¹ See Zehr (1990) for a concise definition and discussion of restorative justice in Chapter Two. In short, restorative justice is a philosophy of justice situated at the opposite end of the justice spectrum, in stark contrast to retributive justice. It engages the victim, the offender, and the community in efforts to repair harm, resolve conflict, and restore balance to relationships.

Restorative justice is partially a result of general realization of the ineffectiveness of retributive and rehabilitative or treatment models of youth justice (Bazemore 1999)¹², and partially based on the Canadian government's desire to be more cost-effective in justice. The deficiencies inherent in a retributive model of justice were recognized by a Parliamentary Committee in 1993 (Horner 1993 in Lilles 1995). It acknowledged that there were "limits to what the justice system could do to prevent crime and that the responsibility for creating safer communities and establishing priorities for crime prevention rests with the community" (Lilles 1995: 79)¹³.

After a limited series of Amendments to the Young Offenders Act in 1992 and 1995 (both of which incrementally increased maximum sentences for murder), and the passing of Bill C-37 in 1996 (which facilitated the transfer of youth charged with violent offences to adult court), the Federal-Provincial-Territorial Task Force on Youth Justice Report (1996) made recommendations that recognized both alternatives to the court process and restorative justice practices. The Meeting of First Ministers (1997) advocated to improve preventative and rehabilitative programs for young offenders (op cit). In the same year, the House of Commons Standing Committee on Justice and Legal Affairs reviewed the youth justice system and found that harsher sentences and experiments with young offender boot camps did not discourage offenders. It recommended that more of the system's resources be devoted to community-based

¹² Walgrave and Geudens (1996) note that western systems of youth justice are under severe pressure. Most critics find that the system's rehabilitative basis neglects the legal safeguards of young offenders (Walgrave 1999). Under the Juvenile Delinquent's Act (1908), rehabilitation was used as a justification for indeterminate periods of punitive custody (Lilles 1995). Feld (1999) notes that, in the current retributive system, "the child receives the worst of both worlds: he gets neither the protections accorded to adults nor the solicitous care ... postulated for children" (20). Deterrence through punishment is ineffective, especially for youth. Many studies suggest that punitive sanctions have a marginalizing and labelling effect (Lipton et al. 1975 in Walgrave 1999).

support and crime prevention strategies, and that alternatives to sentencing be further developed (Canadian Centre for Justice Statistics 1999). Despite the conflicting and bifurcated objectives of increasing the use of both punitive and restorative options, the Minister of Justice and Attorney General of Canada, Anne McLellan, announced the Federal Youth Justice Strategy. In the government's proposed Strategy for Youth Justice Renewal, the Honourable McLellan asserted:

The current system is not working as it should in many significant areas. We need to do more to prevent youth crime in the first place, to develop meaningful responses to youth crime that emphasize responsibility and respect for the victim and the community, and to deal more firmly and effectively with violent and repeat young offenders...Canadians want a youth justice system that protects society and that helps youth avoid crime or turn their lives around if they do become involved in crime... (Department of Justice 1998a: 1).

The Attorney General of Canada is in the process of replacing the Young Offenders Act with the Youth Criminal Justice Act (Bill C-3) that proposes to protect the public, and "command respect, foster values such as accountability and responsibility, and make it clear that criminal behaviour will lead to meaningful consequences" (op cit). To accomplish these objectives, the Act also "recognizes that public protection must be the principal objective of youth justice renewal" (op cit). In its strategy to "better protect the public", two key proposals include prevention (funded through the National Crime Prevention Initiative, and in response to the Royal Commission on Aboriginal Peoples 1996), and encouraging the development of a "full range of community-based sentences and effective alternatives to the justice system" (op cit). The proposal specifies that these alternatives are appropriate only for "non-violent young offenders" to "foster respect,

¹³ See also Canadian Centre for Justice Statistics (1999: ix).

emphasize responsibility to the victim and community, help youth understand the impact of their actions, and allow them to see a clear connection between the offence and its consequences” (op cit). These proposals appear to be positive for minor, first time offenders; however, they also advocate harsher penalties for more serious or chronic offenders.

No amount of change to youth justice legislation will bring about positive change and consistent direction in the practice of youth justice until the philosophy underlying the Act is clearly established (Lilles 1995; Griffiths and Corrado 1999). Restorative justice philosophy cannot be adopted and implemented as a programmatic add-on, but must be considered as a whole new way of accomplishing justice. This philosophy must include principles that encourage young people to take responsibility for their behaviour, through appropriate (non-punitive) harm reparation. A single philosophy of dealing with youth who come into conflict with the law will enable more focused, efficient and effective use of justice and community resources, and yield more consistent application of restorative processes, provided the philosophy is grounded in the principles of restoration, rather than retribution.

While sometimes explicitly associated with left-liberal political ideologies, restorative justice is not, however, necessarily incompatible with the right side of politics. Neo-liberalism is the guiding ideology of globalization; it finds its counterpart in the ideas of New Right libertarian criminology. Here too, we find a selection of ideas and concepts which in many ways dovetail nicely with certain aspects of the “restorative justice” vision. The emphasis is on personal discipline and self-control, with re-moralizing the offender a strong theme. Agency is constructed in terms of “rational choice” involving incentives and disincentives, and each person is thought to be fully responsible (i.e., “accountable”) for their own actions. Once again, restitution is seen as an important part of the punishment process, as is the focus on the victim (White 1998: 5).

Competing Interests, Differing Applications of Restorative Justice: The Criminal Justice System and the Community

It is questionable whether the political interest in restorative justice is genuine in terms of making a dramatic difference in the quality of youth justice processing and crime prevention. It can be argued that the devolution of justice to community-based programs is simply a strategy to reduce costs for federal and provincial governments (Stevens 1994). A direct result of downloading to communities results in under-funded initiatives, and the reduced potential for success of restorative-based programs. Equally damaging is the fact that restorative justice models will continue to be implemented largely as diversionary add-ons to the existing retributive criminal justice system (Umbreit 1999).

To date, there has been an observable discrepancy between what is understood as genuine restorative justice philosophy and current practical applications of restorative justice under the criminal justice system. The applied concept of restorative justice has been treated as a “program” by governments and some entrepreneurs, rather than a philosophy. It has also been modified among government and some justice officials to mean little more than another diversion program, for political aggrandizement, and due to the practical impossibility of incorporating opposing philosophies of restoration and retribution. Reducing restorative justice to another form of diversion serves to further widen the net of social control (Griffiths and Corrado 1997; Cohen 1985). This will be perpetuated with the Youth Criminal Justice Act, as the stated primary objective of the Act is “protection of the public”, and alternatives to custody and the courts are designated

only for “non-violent” or “non-serious” first-time youth offenders¹⁴. This raises the question of whether anything different is being implemented at all. It is not enough that alternative measures programs for youth be slightly expanded and the restorative justice model applied only to these types of offences. Full implementation of restorative justice in its true form involves a change in thinking, or paradigm shift (Van Ness and Strong 1997; Zehr 1990).

If restorative initiatives continue to be considered only as diversionary options, the full potential of the restorative paradigm will never be realized, and restorative methods will never be considered as *the primary method* of responding to conflict created by crime (Umbreit 1997b). Cayley (1998) asserts that:

This will change only if community justice comes to be seen as a true alternative to existing practice in many cases, not just as a marginal supplement to the established way of doing things. This requires relevant comparisons that factor in both the full benefit of community justice in preventing crime and building social morale and the full cost that the formal crime control industry imposes through lengthy incarcerations, broken families, and the cycle of violence that prison perpetuates (191)¹⁵.

First Nations communities, on the other hand, appear to have a genuine and vested interest in the potential and widespread use of (what are now termed) restorative models of justice. The most significant changes in the administration of youth justice, based on restorative and transformative philosophies, and manifested in community-based healing and justice initiatives, are occurring in First Nations communities.

¹⁴ In Section 4-12 of Bill C-3, “extrajudicial sanctions” (alternative measures) are “presumed to be adequate...for...a non-violent offence... (if not)... previously found guilty of an offence” (unpublished notes, Ministry for Children and Families 1999, n.p.).

¹⁵ The intention of this research was not to provide fuel for the latter part of this quote. Discourses on the ineffectiveness of the penal system have more than adequately been provided by Nils Christie (1994), Ruth Morris (1995), David Cayley (1998), Jerome Miller (1991), and others.

It is at the community level...that the most innovative and significant developments in restorative youth justice are occurring, driven in large measure by Aboriginal communities seeking greater authority for and control over all facets of justice service delivery. This has resulted in the creation of a myriad of community-based justice initiatives which hold considerable potential to more effectively address the needs of victims, offenders, and communities (Griffiths and Corrado 1999: 256).

Yukon community justice initiatives have generally not been recipients of minor cases that are otherwise only suitable for diversion from the courts¹⁶. Rather, through the use of sentencing and peacemaking circles, they have strived for an equal partnership with the Territorial and Federal Departments of Justice. This relationship enables local justice committees to decide whether a case can be dealt with at the community level (Bazemore and Umbreit 1997b; Bazemore and Griffiths 1997).

Circle Sentencing appears most advanced in an implicit continuum of the importance given to the decision-making role of communities...[it] provides the most complete example of power sharing [with the system] in its placement of neighbourhood residents in the gatekeeper role...the community is clearly the “driver” in determining which offenders will be admitted to the circle and what should be done in the collective effort to heal the community...the most promising lesson of Circle Sentencing has been that when given decision-making power, residents often choose to include the most, rather than the least, serious offenders in restorative community processes (Bazemore and Umbreit 1998: 19).

Documenting the Progress and Success of True Alternatives Through Evaluation

It is timely and absolutely imperative that the experiences of established restorative justice initiatives (which operate as *true alternatives* to the system), continue to be recognized and shared, to encourage a paradigm shift in philosophy amongst youth

¹⁶ Prospect Community Justice Committee member (1998).

justice professionals and youth justice practice in Canada¹⁷. To ensure the continued development and longevity of these initiatives, and to encourage and preserve their systemic legitimacy as alternatives to the current system, it is important that restorative models of justice are given the opportunity to prove themselves successful in accomplishing their objectives.

In response to the need for evaluations of existing restorative-based community justice initiatives (Griffiths and Corrado 1999; LaPrairie 1998; Roberts and LaPrairie 1996), the research conducted for this thesis *initially* set out to assess how well a restorative justice initiative addresses issues associated with youth crime. However, what became obvious after a period of time in the field, was that regardless of how well-intentioned a community justice initiative may be, there are certain impediments to its potential to successfully address underlying issues associated with youth crime.

These impediments manifest themselves in individual, community, and system level challenges that can pose obstacles to specific efforts at community justice. If left unidentified and/or unaddressed, evaluations will not accurately measure the success of restorative justice as a model, or even of how well a certain initiative practices or accomplishes restorative justice. While not obvious to the uncritical observer, premature evaluations will actually implicitly identify the issues, and the foundational problems inherent in a particular initiative, that prevent community-based initiatives from

¹⁷ This is not to say that the Yukon is the only territory or province that has succeeded in developing true programmatic alternatives to the system. Other initiatives do exist, in First Nations communities and urban centres. Examples include Hollow Water (MB) (see Ross 1996), "Healing Rock" (BC) (see Warhaft 1998), Sandy Lake (ON) (see Cayley 1999; Green 1998), and the Aboriginal Legal Services of Toronto (see Rudin, in Cayley 2000). Other Canadian examples can be found in the publication, *Satisfying Justice* (1996), by the Church Council on Justice and Corrections.

accomplishing their objectives. If interpreted as valid measurements of the effectiveness of restorative models of justice, the result could be devastating to the entire restorative justice movement, and doom communities to continued reliance on and subordination to an ineffective and oppressive system.

Thesis Overview

This thesis begins in Chapter Two, and continues in Chapter Three, by describing, reviewing the theoretical underpinnings of, and critically assessing the effectiveness literature on, three restorative/transformative models of justice: Victim-Offender Reconciliation, Family Group Conferencing, and Community Court Peacemaking Circles¹⁸. There exists a paucity of research on peacemaking circles, which contributes to a lack of understanding and skepticism about circles, on the part of legislators, scholars, and the public. The research that does exist is ideologically polarized between advocates and practical instigators who have a vested interest in the success and proliferation of circles, and critics, who are also commonly supporters of the existing system, who accuse circles of failing to “measure up” to the different objectives of the retributive criminal justice system. Although supporters of circles clearly outline and explain the restorative objectives of circles, for various reasons¹⁹, there is virtually no published empirical

¹⁸ Also referred to as circle sentencing.

¹⁹ These reasons include (but are not limited to) the fact that, as a completely different philosophical alternative to the system, restorative justice is also very fragile. Any amount of criticism can destine it to extinction. Also, many practitioners, those most equipped to conduct evaluations, have neither the resources in time or skills to conduct comprehensive evaluations, especially for purposes other than their own need for program improvement. There is debate as to whether those closest to and most knowledgeable of the initiative and the community (the practitioners), or those most detached, who know and understand very little about the program and community dynamics (presumably “neutral” outsiders) are the ideal evaluators (Focus Consultants 1998).

research that considers whether circles meet their objectives. The discussion in Chapter Three also identifies the impetus for peacemaking circles in the Yukon, through the social, political, and legal contexts in which it developed, and describes the traditional and cultural foundations upon which a “justice as healing” approach is based.

Chapter Four discusses the method employed to conduct the research, and the stages of its development. The ethics and specific sensitivities of the researcher’s experience in conducting field research in a community and culture entirely different from her own is the central theme of the Chapter. The general design and implementation of the research and method will shed insight on some of the limitations of the findings, and provide rationale for the chosen foci.

Many First Nations peoples believe that one must “think of the seven generations gone by, and the seven generations to come” in order to confront the past, understand the present, and plan for the future. It is hoped that the focus on youth in the present (as leaders for the future), and the social, cultural, and historical contexts of the past will facilitate accomplishment of this objective. A description of the specific community in which the research was conducted is provided in Chapter Five (while maintaining anonymity), to facilitate a necessary understanding of the community context and dynamics in which the particular circle initiative under study developed and continues to operate. In Chapter Five, and continuing in Chapter Six, the peacemaking circle initiative in the research community is discussed with reference to the individual, community, and system level challenges voiced by research participants. These challenges affect the potential impact that this community-based justice initiative has on youth criminal

behaviour, the extent to which peacemaking circles accomplish other stated objectives, and the initiative's survival.

On the individual level, several factors such as a lack of connection to the community, frustration over social conditions, feelings of marginalization, and negative relations with and a lack of support from many adults in the community affect young people's desire to make a difference in developing their communities. Young offenders may not understand, or be ready to engage in realizing the varied process and outcome objectives of peacemaking circles.

On the community level, feelings of inclusion, community consultations, and public information may initially encourage community member support. However, unaddressed social issues, power imbalances, fears of change, apathy or indifference may prevent or erode community support, increase conceptual resistance, or perpetuate a reluctance to become actively involved. A lack of widespread community involvement, interest, or confidence in community-based justice may result in an unsupported initiative, which may perpetuate its marginalization, prevent its normative use, or reduce its potential for success. Negative perceptions may go unchallenged, due to a lack of involvement, which may fuel inaccurate assumptions about the effectiveness of peacemaking processes, or their leniency.

If the criminal justice system is reluctant to relinquish control, and attempts to co-opt, but provides little financial support for peacemaking circles, community-based processes may not obtain the legitimacy or resources required to survive.

Reliant on all of the above factors, the success of a community court peacemaking circle initiative will not only affect a youth's continued involvement in criminal activity, but also directly impact on the health and functionality of future generations and of the community as a whole. A successful community-based peacemaking circle initiative will enable the community to further develop and engage in more appropriate and need-specific responses to crime, conflict, and approaches to social problems, and perhaps for the first time since colonialism, experience true justice and healing. Ultimately, accomplished community building will result in furthering objectives that are critical to Aboriginal self-government (Stevens 1994): healthy communities; the revitalization of culture; self-determination, increased community capacity and self-sufficiency; and the reassertion of power and authority at the community level (Griffiths and Corrado 1999).

Findings from this research can be used at different operational and theoretical levels. Participant opinions are woven together to provide the Community Justice Committee with some documentation of the challenges, as voiced by a portion of community members, to be used for whatever purpose the community sees fit. Future research directions are also identified, to address the general lack of information, misunderstanding, and skepticism about circles and their potential to successfully address crime and victimization, and build healthy communities. Anecdotal, qualitative, statistical, and theoretical research on peacemaking circles and their long term potential are important in encouraging Canadian youth justice legislators and policymakers to

recognize the value of implementing restorative philosophies of justice into practice²⁰.

Although legislation cannot be the sole instigator of change in how issues associated with youth crime are addressed, it is necessary that guiding philosophical changes in legislation work in tandem with the direction in which communities are taking responsibility for justice issues, toward addressing youth crime at the root causes, on a community level. The Western system has much to learn from First Nations communities that successfully address the most serious and chronic youth offending in community-based circle processes. It is hoped that documented successes in the future will encourage widespread support against the marginalization and co-optation of restorative and transformative models of justice.

²⁰ This would also challenge the presumed limited success and proliferation of restorative justice in Canada, which Umbreit (1996a) predicted. While other countries have made legislative changes to accommodate increased use of restorative justice initiatives (eg. the United States and Germany), "in other countries, such as England and Canada, the number of programs have remained fairly constant for nearly a decade. At this point, it does not seem likely that the practice of [restorative justice] will significantly expand in these countries" (Umbreit 1996a: 21).

**CHAPTER TWO:
TWO MANIFESTATIONS OF RESTORATIVE JUSTICE IN THEORY AND
PRACTICE: VICTIM-OFFENDER RECONCILIATION AND FAMILY GROUP
CONFERENCING**

*T*his vision of justice isn't just about saving money or averting prison construction -- and it's certainly not about being soft on crime. It's about making things right instead of lamenting what's wrong, cultivating strength rather than perpetuating failure (St. Paul/Minnesota Star Tribune, Sunday July 11, 1993: 21A)

The Historical Context and Philosophy of Restorative Justice

The Maori peoples of New Zealand (Hassall 1996) and North American First Nations peoples (Morse 1983; Griffiths and Hamilton 1996; Zion 1998; Huber 1993; Ross 1993; Ross 1996) practised traditional methods of conflict resolution that have recently been revived and revised by some First Nations communities and Western justice reformers. It is unfortunate that centuries passed before western European settlers of what became the British colonies began to realize the potential of restorative methods. As European settlers of the Americas invaded the lands occupied by First Nations peoples and their cultures, they imposed western ideals of "justice" through punishment. Just as they believed they had discovered land, they believed their notions of "justice" were more "civilized" than the methods of conflict resolution practised by the "savage" indigenous peoples, and chose the position of "total rejection" of First Nations systems of social control and responses to wrongdoing (Morse 1983). Instead of imposing western "justice", colonialists may have benefited from observing and incorporating indigenous methods, realized that the original inhabitants were more in touch with humanitarian

methods of justice, and may have prevented the crisis in justice that now confronts western societies. “Rather than ask about [First Nations cultures and world views], it appears that the settler nations were content to assume that anything different was inferior, and to treat Aboriginal culture as exactly that” (Ross 1996: 59).

Restorative justice elements of consensus decision making, reconciliation (rather than punishment), a focus on examining the underlying reasons for the conflict, and the restoration of harmony were all apparent features of dispute resolution practised by the Maori people prior to western colonization:

Tikanga o nga hara, for example, translates broadly into the law of wrongdoing in which there were clear concepts of right and wrong. The law, however, was based on notions that responsibility was collective rather than individual and that redress was due not just to any victim but also to the victim’s family. Understanding why an individual had offended was also linked to this notion of collective responsibility. The reasons were felt to lie not in the individual but in a lack of balance in the offender’s social and family environment. The causes of this imbalance, therefore, had to be addressed in a collective way and, in particular, the imbalance between the offender and the victim’s family had to be restored through mediation (Maxwell and Morris 1993: 3).

The restitutive aspect of restorative justice is based on an ancient form of conflict resolution, which was practised as early as humans began forming societies (Van Ness 1990). Restitution was one of the most common forms of resolving conflict in acephalous societies, because of its ability to allow disputing clans to resume harmonious relations expeditiously (Weitekamp 1999). Both the victim’s and the offender’s clans were involved in the restitution negotiations, and were therefore in control of both the

agreements and the outcome¹. This method demonstrated the value of problem solving, the belief that deviant behaviour was a community (and not an individual) problem, and the interest of promoting peaceful community relations.

In the western European world, restitution-centred justice changed to state-centred justice in the Middle Ages (the late 5th century to the 12th century), when William the Conqueror began to use the legal process to increase his political power. Although the restitutive system was not voluntarily abandoned by the people, it was nonetheless deliberately co-opted by the Crown and then discarded (Weitekamp 1999)². Crimes against the person (e.g., arson, robbery, murder, false coinage, violence) became “offences against the King’s peace”, and the King was subsequently paid restitution (Van Ness 1990: 8; Weitekamp 1999). The actual victim was removed from any meaningful involvement, and was denied compensation for any loss. The King became the paramount victim, and a new model of justice emerged, with the offender and the state as central parties (op cit). The principles of “justice” became what they are today: to prevent future crime through deterrence, incapacitation, and punishment.

The decline in the victim’s role indicates a major shift in the nature of social control (Weitekamp 1999). As the state becomes the settler of disputes, this role is taken away from the communities, which renders restorative justice practically impossible. The potential for trouble or conflict increases (Michalowski 1985, in op cit).

¹ The restitutive process in acephalous societies served six functions: to prevent further, more serious conflicts; to rehabilitate the offender back into society quickly and to avoid negative stigma; to address the victim’s needs; to reaffirm societal values; to socialize community members about norms and values; and to regulate offending behaviour and serve as a general deterrent (Nader and Combs-Schilling 1977, in Weitekamp 1999).

² It has also been argued that applied restitutive justice was abused by those in power, and misused by the rich as a cheap way out of trouble, which led to social chaos and public outcry (Weitekamp 1999).

“Responsibilities become increasingly individualized rather than collective, thus making more abstract the obligation to conform to social rules” (Weitekamp 1999: 12).

Although credited as a pioneer of the classical school, Beccaria was a humanitarian who was opposed to capital punishment and the arbitrary application of the law (Weitekamp 1999). This laid the theoretical groundwork for advocates of restorative justice, which was continued by Jeremy Bentham, who supported the compensatory needs of victims (op cit). Despite the fact that his philosophy was still rooted in retributive justice, Bentham was one of the first advocates of a “state compensation plan”, and considered victim satisfaction to be almost as necessary as punishment (op cit). Tallack (1900) viewed reparation as the chief element of punishment, and described it to be “wiser in principle, more reformatory in its influence, more deterrent in its tendency and more economic to the economy” (cited in Weitekamp 1999: 19) than state-imposed punishment, whose primary goal was to inflict suffering on the offender.

More recently, it has been recognized by penal abolitionists (Miller 1991; Morris 1995), informal justice movements (Christie 1977; Auerbach 1983), restitution movements (Weitekamp 1999; Abel and Marsh 1984), the victims’ movement, reconciliation / conferencing movements (Galaway and Hudson 1990, 1996), social justice/Christian movements (Zehr 1990), feminists (Harris 1987), and more recently in some mainstream circles, that there are, or must be more effective ways to deal with crime, and address its underlying causes and resulting harms, beyond institutions and custodial dispositions (Van Ness and Strong 1997; Cayley 1998). Each movement advocated for a combination of some or all of the following principles: the reduction or

abolition of retributive sanctions; active participation and security of the needs and rights of the victim; offender accountability; healing; harmony; personal responsibility; human worth; and restitution (Van Ness and Strong 1997).

Informal justice, abolitionism, reintegrative shaming, psychological theories of affect, feminist theories of justice, peacemaking criminology, philosophical theories, and religious and spiritual theories have paralleled the social movements advocating restorative justice (Daly and Immarigeon 1998).

What is Restorative Justice?

Both the punishment and treatment models focus on the actions of offenders, deny victim participation in the justice process, and require merely passive participation by the offender. Restorative justice, on the other hand, focuses on the harmful effects of offenders' actions, and actively involves victims and offenders in the process of reparation and rehabilitation (Eglish 1977, cited in Van Ness 1997: 10).

In the traditional public safety model inherent in the retributive system, the focus is on the offender; in a restorative justice model, the focus expands to the victim and the community (Guarino-Ghezzi and Klein 1997). Three broad elements are fundamental to any restorative justice definition and practice (Galaway and Hudson 1996). First, crime is viewed as a conflict between individuals; second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute; and third, active participation by victims, offenders, and their communities will bring about resolutions to the conflict (op cit).

Restorative Justice Principles

The recent conceptualization and philosophy of restorative justice was given birth by critics of the current system, as well as out of political, philosophical, and theological concerns (Van Ness and Strong 1997). But “while there is diversity in their underlying premises as well as in their conclusions, they also show a surprising agreement of certain fundamental premises” (op cit: 2)³.

Dissatisfied with the current retributive model's explanations of crime as lawbreaking and justice as allocating blame and punishment, and critical of the system's failure to meet the needs of victims and offenders, Howard Zehr (1990) developed a framework for the restorative model of justice. According to Howard Zehr,

Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance (1990: 181).

Zehr (1998) argues that while this definition succinctly describes restorative justice as a “collaborative process to resolve harms” (54) (as the restorative model is a response to harm rather than law-breaking), he believes it is important to engage in a more detailed analysis of the main features of a restorative approach, in order to differentiate between those programs which are necessarily restorative, and those which are not.

Crime is a violation of people and interpersonal relationships

Restorative justice is partially a process of restoring the situation between the

³ See also McCold (1996); McCold (1997); Sharpe (1998); Claassen (1995); Zehr and Mika (1998); for similar explanations of restorative justice principles.

victim and the offender, through two key principles of reparation and victim/offender mediation (Cragg 1992; Wright 1991; Wright 1996; Netzig and Trenczek 1996). Because victims (those directly and indirectly affected by the crime) and community members have been harmed, they (individually, and their relationships) are in need of restoration, which involves a “continuum of responses” to address their ranging needs (Zehr 1990; Van Ness and Strong 1997). This involves recognizing the wrong the victim has experienced and identifying the roles of the offender and the community in helping to address these concerns, provide answers to issues that haunt the victims, and support the victim through the natural grief process (Morris 1995). Whether community members form part of a “geographic” community or community of “interest”, their sense of safety and confidence and common values may have been challenged and even eroded (Van Ness and Strong 1997). The state is no longer a primary victim, and its role is reduced from one reflecting its current monopoly over criminal justice to simply preserving order by facilitating an environment with the community that fosters conflict resolution, restitution to victims, and fairness to offenders (Van Ness 1996). The participation of willing victims, offenders, and communities in restoration, healing, responsibility and prevention is key (Zehr and Mika 1998).

Violations create obligations and liabilities

Daniel Van Ness (1997) similarly comments on the notion that crime is more than lawbreaking; it causes injury to victims, communities, and offenders. Justice, as a response, requires that victims, offenders, and communities have obligations to actively participate in the healing and reparation process. Victims are given the opportunity to

voice their interests and help define obligations, which in turn helps them regain a sense of control (op. cit.), and offenders are encouraged to assume responsibility by understanding the harm they have caused and to address the needs of their victims, themselves, and the community (Zehr 1998; Van Ness 1990). The offender also has a right and responsibility to recognize and address his/her own life experiences that might have contributed to (or resulted from) the crime, without using these circumstances as justification for the offence (Morris 1995; Van Ness and Strong 1997). These obligations have no coercive, painful or vengeful intentions which result in added injury (in being incarcerated and further alienated from their families and society) (Van Ness and Strong 1997), because “pain is often irrelevant or even counterproductive to real accountability” (Zehr 1997: 68). It is only when victim and offender needs are addressed that a path toward transformative justice can be developed (Morris 1995; Zehr 1998). The community has an obligation to support victims and offenders and help them meet their healing and (re)integration needs, and to take responsibility in creating social conditions conducive to resolving conflict (by addressing underlying social, economic and moral factors that contribute to conflict) and establishing/maintaining community peace.

Restorative justice seeks to heal and repair harm

According to Van Ness (1997), the values of restorative justice include *encounter*, *reparation*, *reintegration*, and *participation*. *Encounter* refers to the face-to-face meeting between the victim, the offender, and their communities, “to develop an understanding of the crime, of the other parties involved, and of the steps needed to make things right” (op. cit: 3). *Reparation* involves making amends, in a variety of ways, which are agreed upon

by the parties in an encounter. *Reintegration* refers to the re-entry of a victim and /or offender into the community as a whole, contributing, productive person. This goal can be attained as a result of the encounter, and through referral to community resources.

Participation by both parties and their support groups will encourage understanding of what led to the crime, and hence what steps toward healing are required. The process can be further summarized in the following way:

Restorative justice emphasizes the need for active involvement of victims, the community, and offenders in a process focused on denunciation of the offence, offender acceptance of responsibility (accountability), and reparation, followed by resolution of conflict resulting from the criminal act and offender reintegration (Bazemore and Umbreit 1995).

The safety and needs of victims are an immediate priority, and offenders' needs for change are valued. Offenders are treated respectfully and removal from the community is used only as a last resort, and never for the purposes of coercive or punitive ends.

“Punishment that does not help repair the injuries caused by crime simply creates new injuries; now both the victim and the offender are injured” (Van Ness 1997: 3). Active community involvement and the use of community resources strengthen the community in its abilities to address its own issues, and reinforce community values of respect and compassion (Van Ness 1997; Zehr 1998).

Applications of Restorative Justice in the Youth Justice Context: Effectiveness Research

Considering the above-stated principles and objectives of restorative justice, an examination of the research which considers whether these initiatives have the potential to meet these objectives is necessary. However, “there is a paucity of research and

evaluation from which to draw conclusions about the impact of such programs” (Zehr and Mika 1998: 49). Not only has limited research reported on the extent to which objectives are met in restorative sanctions (Galaway and Hudson 1996), but “[v]ery little research has been devoted to ways of integrating the marginalized and dispossessed people who fill our prisons and finding them a place in our communities” (Morris 1995: 95). In sum, very little attention has been paid to offender healing and reintegration (Schiff 1999).

While the intentions of many restorative justice advocates are to focus on the needs of the victim (which are ignored in the current system), this shift in focus should not deny offenders attention to their needs. Politically, restorative approaches to youth justice need to be proven effective in terms of addressing public safety and rehabilitation needs. Failure to explicitly address the healing of the offender “as part of a holistic restorative framework leaves a void that is likely to be filled by either a warmed-over medical model, or new get-tough approaches [to youth crime] such as boot camps that attempt to merge rehabilitation with shock and punishment” (Bazemore 1996: 52). The almost inevitable consequence of these proven ineffective approaches dooms the offender to failure, and leaves the underlying issues that previously led to offending behaviour unaddressed. Consequently, victim and community needs continue to be ignored as well.

Of the literature that does address the benefits of restorative methods for the offender, the majority focuses on theoretical objectives, as opposed to practical outcomes (see Van Ness and Strong 1997; Zehr 1990). For example:

For those who have harmed another, the restorative process can be equally engaging. It encourages them to reflect upon and accept responsibility for their harmful behaviour, to offer a genuine apology to those they have harmed and thereby begin making reparation for what they have done. It is

hoped that through this process they can put the offence behind them, regain or perhaps develop for the first time a degree of self-esteem, and in the process become reintegrated into their family, workplace, school, or community which they might share with the person they have hurt (Sullivan, Tift and Cordella 1998: 9).

The following section will briefly describe two main models of restorative justice and review the literature that has attempted to address their potential (or realized) impact on young people who engage in offending behaviour. Each model falls under the rubric of restorative justice, is generally concerned with the denunciation of criminal behaviour, strives for restorative outcomes, and shares some degree of commitment to challenge the existing boundaries of criminal justice (Bazemore and Griffiths 1997). However, each model is based, to varying degrees, on different yet complementary theoretical underpinnings, which affect not only the objectives, but also the outcomes of each type of initiative (op cit)⁴. Victim-offender reconciliation programs (VORPs) are primarily concerned with involving, restoring, protecting, and meeting the healing needs of victims; and family group conferencing (FGC) objectives include diverting the youth out of the system, reintegratively shaming the offender, strengthening the family of the youth, and dealing with the effects of the immediate crime.

These two theoretical foci can be summarized under the terms *restorative justice* (see Van Ness and Strong 1997) and *reintegrative shaming* (see Braithwaite 1989). Each theory will be briefly discussed according to the relevant restorative justice model and in conjunction with the available effectiveness literature.

⁴ Each perspective also appears to have influenced the way in which each model defines the community, victim and offender roles, the extent of community involvement, offender eligibility requirements, the conference or circle process, and the sanctions imposed (see Bazemore and Griffiths 1997).

VORP and Restorative Justice Theory

Victim-offender reconciliation (and victim-offender mediation) has been described as “the oldest and most well developed restorative justice intervention” (Umbreit 1997b: 9). The origin of VORPs in North America has been traced and researched by Mark Umbreit (1994) and Russ Immarigeon (1996) (Galaway and Hudson 1996). The first VORP was established by the Mennonite Central Committee in Kitchener, Ontario in 1974, and over 300 initiatives currently operate in North America (Church Council on Justice and Corrections 1996; Sullivan et al. 1998; Umbreit 1997b). Although contact between victims and offenders previously occurred in other programs (e.g., mediation at the pretrial diversion level), the VORP process “represented a significant extension of these efforts by applying structured mediation techniques in a systematic fashion with convicted offenders and their victims, usually involving the offences of burglary and theft” (Umbreit and Coates 1993: 16). The initial VORP emphasized a need to address the emotional and informational needs of both parties; restitution was only an incidental (but important) outcome (Umbreit and Coates 1993). While the format of VORPs generally consist of a victim, offender, and mediator, the points of referral and the stages at which VORPs operate vary (Umbreit 1997b). Some offer an alternative to court and incarceration (for less serious, or property offences), and others take place at the post-charge stage in a custodial environment (for more serious or violent crimes) (Flaten 1996; Immarigeon 1996). The offence type most commonly dealt with through VORP in the U.S. is property crime (particularly vandalism and burglary), and in Canada, the offence most often cited in reports is shoplifting (Coates 1990).

Advocates of restorative justice theory propose that a restorative model's purpose is to respond to crime at the *micro* level, by addressing harm that results when a specific offence is committed, and at the *macro* level, in its attempt to build safer communities through co-operative relationships between government (responsible for order) and communities (responsible for peace) toward the objective of crime prevention (Van Ness and Strong 1997). The *process* of repairing the harm caused by crime is accomplished in empowering participants, promoting dialogue and encouraging mutual problem-solving (Van Ness 1990). The *outcome* of restorative justice seeks to address the needs and balance the rights and responsibilities of victims, offenders, communities and the government to reduce and resolve conflict, and restore harmony (Bazemore and Umbreit 1995; Van Ness and Strong 1997).

Because the primary objective of VORP initiatives is to increase the participation and satisfaction of the victim with the justice process, VORP evaluative literature, although very limited in quantity, is also limited in scope. It is highly victim-centred (Schiff 1999; see Umbreit 1996; Netzig and Trenczek 1996; Immarigeon 1999; Nugent and Paddock 1995). However, part of the aim of alternatives to the justice system's current method of processing youth crime cases must be to help prevent crime in the future; this objective can only be realized by assessing whether the methods effectively address the conditions that contributed to the offending behaviour. This cannot be done without considering the impact of the restorative method on the young offender.

The level of satisfaction of restorative processes for the offender is highly reliant on whether he or she is encouraged to take responsibility for the act, given the

opportunity to participate and repair harms caused to facilitate re-integration into the community, supported in the endeavour to identify and address underlying issues that contribute to the offending behaviour, and granted assistance and guidance in meeting these needs (Zehr 1990). The *First Nations Youth Diversion Program: Initiating Restorative Justice for Urban Youth* project outlines possible observable indicators, which include: a decreased level of involvement with the youth justice system; increased level of family, extended family and/or community involvement in the life of a youth who was/is in conflict with the law; and an increased level of involvement in community programming to promote healing and wellness in mind, body, spirit, and emotions (Federation of Saskatchewan Indian Nations 1996).

Zehr (1997) asserts that “neutralization strategies” (the stereotypes and rationalizations that offenders use to distance themselves from the people they hurt) are never challenged in traditional crime control models of justice in the court process. Neutralization theory is combatted in restorative justice. The feeling that offenders are victims of their environments and of the system (and society) is perpetuated by the prison experience, which victimizes them further. If offenders are taught to take responsibility for themselves, their actions, and their underlying issues, their perceptions of victimization are confronted and addressed.

Although the vast majority of offenders served through VORP are youth (Coates 1990), much of the research that has attempted to assess the potential of VORP/restitutive programs with offenders has been conducted with adults (Netzig and Tenczek 1996; see Umbreit and Coates 1993). Many of those studies, and the few which have involved

youth, are methodologically problematic⁵. Most research has found decreased recidivism rates following VOM participation when compared with similar offenders going through the traditional youth justice system process (Schneider 1986; Umbreit and Coates 1992, in Schiff 1999; Rowley 1990; Pate 1990). Nugent and Paddock (1995) concluded that, in addition to the fact that recidivism rates were lower among youth who participated in VORP, those youth who did re-offend committed less serious offences than those youth in a comparable control group. Wynne (1996) reports low recidivism rates from two follow-up studies of offenders who participated in mediation, and O'Haley (1992) noted recidivism rates of 25 percent or less in programs in Canada, the United States, and the United Kingdom.

However, in one study, a group of youth who were referred to mediation in Washington, but chose not to participate, had a lower recidivism rate than those youth *randomly* assigned to regular probation (Umbreit and Coates 1993, emphasis added). This finding could indicate that giving youth a choice in how they are processed by the courts had a positive effect on their future offending behaviour (op cit), or it could indicate a (however unintentional) selection bias (e.g., youth referred to mediation were at extremely low risk to re-offend to begin with). Not only do the lack of comparison groups and/or the likelihood of selection bias in these studies force the observer to interpret these results with extreme caution (Galaway and Hudson 1996), but the fact that

⁵ In other words, they are incapable of “telling the whole story” through the application of solely quantitative methods: plagued by a biased, small, or unrepresentative sample size; or based on traditional crime control measures of success.

recidivism rates constitute the principal measure of “success” must also be critically interpreted (Galaway 1988, in Netzig and Tenczek 1996).

Recidivism rates alone are not accurate indicators of the success of a particular response to crime. Other factors affecting law abiding behaviour (such as personal biography, maturity, social opportunities, and the general social and cultural cohesion of society) have much greater impact on an individual’s decision to commit future crime (Galaway 1988 in Netzig and Tenczek 1996). Although the main objectives of many VORP programs are to hold young people accountable for their actions and to directly address the needs of victims, the “yardstick” (Zehr 1990)⁶ most commonly applied by external sources to measure the success of restorative justice initiatives is the recidivism rate of participating youth (Pate and Peachey 1988).

For example, a recent study by the Department of Justice (Latimer and Kleinknecht 2000) compiles current evaluative research on VORPs, FGCs, and other types of restorative-based initiatives. The study compares recidivism rates, victim and offender satisfaction rates, restitution agreements and completion rates, and financial costs to the criminal justice system, which only measure the most basic objectives of restorative justice. They consider the first three to be the “three central indicators of success” (op cit: 20), which are “crucial to ongoing support for restorative interventions” (op cit 20). While the authors recognize that “there are a multitude of moderating variables” (op cit: 18) that affect the effectiveness of processes and outcomes, the fact that the compilation

compares very different programs (which strive for different objectives) is conceptually problematic. Although a small portion of programs reported improved or repaired relationships, or stronger perceptions of community safety, an important finding of the research included the fact that community benefits were largely ignored in most evaluative research efforts (Latimer and Kleinknecht 2000).

Wright (1992) advocates the value of evaluations on restorative processes, and argues that restorative justice should meet the aims of the criminal justice system, while avoiding the harmful side-effects of punishment. However, initiatives have been criticized for their “failure to promote alternative criteria of effectiveness more in line with their practice of alternative values” (Zehr and Mika 1998: 50). Subjecting an initiative to measures of success based solely on the objectives of the criminal justice system is too limiting of an assessment to realize the broader potential and multifaceted objectives of more holistic restorative methods (Griffiths and Corrado 1999; Netzig and Trenzcek 1996). Empirical data on such quantifiable measures as recidivism rates, restitution payment/completion, numbers of case referrals resulting in mediation, percentage of cases in which a restitution plan was negotiated, personal/community service hours and victim satisfaction (Umbreit 1992; 1996b)

are only the related, secondary indicators of real success. In restorative justice terms, real gains occur when an offender realizes the impact of his or her behaviour on other people; when relationships are healed or new bonds are formed; or when something robbed of the community is restored (Gerard 1996: 4).

⁶ See Zehr (1990) for a starting point of relevant questions that serve to evaluate the objectives of meeting victim, offender, and community needs in restorative processes.

Gerard (1996) notes that the benefits of restorative justice are largely intangible, and much broader than the benefits of the criminal justice system. There are many more (seemingly intangible) measurable objectives of restorative initiatives that have not to date been used to demonstrate the potential of restorative approaches. While objectives such as pro-social behaviour, positive life changes, community revitalization, crime prevention, reconciliation, community development, peace of mind, increasing social bonds/competence, offender accountability and reintegration to the community (Hudson and Galaway 1996; Gerard 1996) may not be quantifiable, they are important potential benefits of restorative initiatives that can only be demonstrated through more in-depth, qualitative research.

Research has been criticized in terms of its lack of inter-program evaluative consistency (Schiff 1999), or comparative data across programs (Pate and Peachey 1988). However, as program goals vary, so must their indicators of success. Program goals in some VORPs include offender rehabilitation, diversion of cases from the courts, prevention of further “trouble”, and economy of resources (Marshall and Merry 1990). Another study (Hughes and Schneider 1990) discovered that the primary objectives of most American programs included offender accountability, followed by restitution to victims, victim reparation, reconciliation between victim and offender, offender rehabilitation, and the avoidance of a custodial term (in Umbreit and Coates 1993)⁷.

⁷ The avoidance of a custodial term rarely happens (at least in mainstream, non-First Nations or VORP/VOM initiatives). Umbreit (1999) argues against the popularization, or “McDonaldization” of restorative justice. See *Satisfying Justice* (1996), by the Church Council on Justice and Corrections. However, the Restorative Resolutions Project in Winnipeg, MA is an exemplary model of how restorative justice can be used as an alternative to incarceration (see Richardson, Galaway and Joubert (1996)).

Some researchers consider “[r]ates of mutual agreement and compliance with restitution obligations, the participants’ satisfaction with the procedure and its results, and the change in attitudes toward the other party” as strong indicators of success in restorative processes (Netzig and Trenczek 1996: 253). Others have witnessed communication as an important factor in enabling offenders to express remorse and guilt, to make amends, and to gain knowledge of victims’ forgiveness, which influences offenders’ cognitive representation of the conflict, their self-image, and the possibility of future offending (Estrada-Hollenbeck 1996).

Schiff (1999) has written probably the most comprehensive compilation of research conducted on the impact of restorative interventions on young offenders to date. However, she cautions that it is difficult to identify whether the impacts on offenders result from the process of mediation, rather than the sanction imposed (such as restitution or community service (op cit)⁸). Research on the impact of restorative processes on young offenders states that youth were anxious to confront their victims, and some youth had mixed reasons for participating in VORPs (Schiff 1999). Initially, they participated to avoid incarceration or prosecution, to help them to get a job, to provide them with an opportunity to express remorse, to offer an apology, to repair a relationship, and/or to achieve understanding with the victim (see Coates and Gehm 1989; Warner 1992).

Regardless of their reasons for participating, ultimately, youth felt that negotiating and paying restitution, discussing the event with the victim, apologizing, discovering that their victim was willing to listen to them (Coates 1990), and seeing and understanding the

consequences of their actions (Marshall and Merry 1990; Umbreit and Coates 1993) were the most satisfying aspects of the program (Umbreit and Coates 1993). A perhaps less frequent but important finding in one study was that youth felt empowered to decide how to repair the harm done to their victims and felt respected in the process (Umbreit and Coates 1993). These findings are important considerations when assessing the potential of restorative processes to increase feelings of accountability among youth (Marshall and Merry 1990).

Most impact literature is conducted in relation to reparative or restitutive programs (see Walgrave and Geudens 1996). It has been observed that the rehabilitative impact is increased when reparative sanctions are viewed by the offender as fair and when they are truly victim-focused (Umbreit and Coates 1993, in Bazemore 1999). Completing restitution to the victim can also contain educative value for the offender, in terms of enhancing feelings of citizenship and community commitment (Schneider 1990, in Bazemore 1999), as well as learning of his/her own competencies that can be transferred outside the reparative setting, to community or employment related settings. Schneider (1990, in Bazemore 1999) has also discovered a link between completion of reparative sanctions and reduced recidivism.

In a qualitative study of seven cases of youth who had committed serious offences, Flaten (1996) discovered that mediation helped the youth to understand how they had affected more than the immediate victim, to personalize the effects of the

⁸ This may be irrelevant if the desire is to demonstrate the positive impact of restorative justice, considering the latter can be considered restorative justice interventions, provided they subscribe to the principles.

offence, and to genuinely apologize to the victim and explain that the crime was not personal. She concluded that restitution was not the primary goal of these mediations; however, healing, reconciliation, accountability, and closure for all parties were major accomplishments. The overall effects of a mediated dialogue (which took place within a custodial facility) between victims and youth who had committed serious offences include: discovering emotions/feelings of empathy, increasing awareness of the impacts of their acts, increasing self-awareness, opening their eyes to the outside world (rather than closed institutional thinking), feeling good about having attempted the process, and achieving a sense of pride and peace of mind with the knowledge that they helped a former victim (Flaten 1996).

Negative experiences with the mediation process were also reported by youth. These include feeling disempowered or a sense of injustice, dissatisfaction with the mediator, being overly criticized by the victim, grievance with other parts of the youth justice system, and having experienced an uncomfortable meeting (Umbreit and Coates 1993). These criticisms are important considerations when focusing on repairing past mistakes with the mediation or reconciliation process; however, they are not necessarily complaints about the model in itself, and are certainly not irreparable problems, if relevant programs are made aware of them (Lilles 1995).

Although Coates (1990) reports that the second highest-rated satisfaction for offenders was staying out of custody or avoiding a criminal record, it is questionable whether youth were initially destined for these outcomes. Coates and Gehm (1988, in Coates 1990) note that in an Indiana study, it was determined that only 20 percent of

youth would have likely served a period of incarceration. The Church Council on Justice and Corrections (1996) reports that while many individuals benefit from avoiding imprisonment, or a reduction in its length, “in many jurisdictions, including all of Canada’s, the use of these more cost-effective options has failed to reduce the overall use of imprisonment as a sentence” (IV-V)⁹. Restorative options seem to have failed to decrease the use of youth custody and costs associated with prison use. “Clearly, with VORP as with most such programs, continuous monitoring is needed to determine the extent to which it is replacing another disposition...or being used as an add-on to a sentence” (Coates 1990: 130).

When victims and offenders do meet, a high percentage (over 90 percent) arrive at a signed contract agreeable to both parties (Coates 1990). Compliance with restitution agreements were significantly higher: around 80 percent, following VOM participation than after other, more traditional processes which attempted to impose orders (Umbreit and Coates 1993; Pate 1990). Some studies have noted an increase in restitution completion rates where the young offender was previously acquainted with the victim (Marshall and Merry 1990), and others demonstrate the opposite effect (Warner 1992). Repeat young offenders who knew their victims were more likely to repair the harm; however, “this was less likely in violent or sexual assault cases” (Marshall and Merry 1990).

⁹ While restorative measures have not increased recidivism or crime rates, they are not providing communities with what the Church Council on Justice and Corrections (1990) terms “Satisfying Justice”. The premise of this argument is such that the overreliance on incarceration in Canada still exists. The authors place much of the onus on decisionmakers to recognize that sentences other than incarceration are a more appropriate, effective and desirable response to criminal behaviour. This argument is supported by the belief that, on a practical level, prisons fail to provide satisfying justice to victims and communities and are often harmful to those who live and work in them, with devastating and long-lasting effects on incarcerated youth and the children of prisoners.

Regarding satisfaction with the restorative process and the outcomes achieved, most research indicates that young offenders are generally satisfied with both the process and the outcome of VORP (in Schiff 1999), albeit slightly less satisfied than their victims (Umbreit and Coates 1993). Young offenders who met their victims were more likely to perceive the process as fair and interpret VORP as a more “humanizing” justice response (Umbreit 1997). The vast majority of youth in one study (94 percent) reported feeling better after having met their victim, and slightly fewer (84 percent) believed their victim had a better opinion of them (Umbreit and Coates 1993). Schiff (1997) concludes that, when offenders believe they have been treated fairly, they “are not averse to being held accountable, even when this may imply a seemingly more difficult agreement” (8).

The research noted above demonstrates some value in specific VORP initiatives, and the methods and results provide a basis for more in-depth studies of the potential of restorative justice for young offenders. Latimer and Kleinknecht (2000) recognize that new paradigms of justice are “routinely held to a much higher standard than the traditional system. Pilot programs often need to demonstrate immediate and unrealistic results” (22), which emphasizes the importance (however unjustified) of a more strategic and long term approach to evaluative research. Various criticisms have been leveled against not only the lack of evaluations of restorative initiatives, but regarding chosen indicators of success, the generalizability of these studies, and the purposes of and incentive for evaluation. Firstly, measures of the impact and effectiveness of restorative justice should not be limited to perceptions of fairness and satisfaction (Zehr and Mika 1998). While these are important objectives, it is difficult to understand whether

perceptions of fairness are due to a particular program, a particular element of its practice, its implementation, or the model of restorative justice as a whole.

Second, the difference in legal systems limits the applicability of VORP evaluative research to national contexts (Netzig and Tenczek 1996). Also, “[t]here is a heterogeneity of restorative-styled programs that makes generalizing difficult to begin with” (Zehr and Mika 1998: 49). Because restorative justice is a community-based initiative, and each community is different, as is each initiative’s objectives, these studies have very little generalizability regarding the potential of restorative justice to address crime beyond its specific application to the initiative in question (see Umbreit 1992). And due to the fact that applications of restorative justice are still in their infancy, any deficiencies noted in specific initiatives likely have more to do with the way an initiative has been developed or operates than the model of restorative justice itself. Many evaluations of restorative based processes are self-evaluations, and used primarily for the purposes of securing funding or improving operations (Netzig and Tenczek 1996), if they are conducted at all:

We find that restorative justice programs are resistant to evaluation to begin with, where evaluation is viewed as a threat, and/or where programs are too exhausted from the efforts to ensure day-to-day (financial) survival to bother with the more esoteric demands of assessment (Zehr and Mika 1998: 49).

Third, while these evaluations have not necessarily been applicable to broader policy implications, their value to date has been in identifying and educating developers of restorative initiatives regarding developmental or operational challenges. However, the need for additional evaluations is not limited to this purpose. Unfortunately, the lack of

evaluations may be related to the perception that research that serves to discount the potential of restorative-based responses to crime serve to “strengthen the hands of those policy makers promoting truly harmful, retributive sanctions” (Bazemore 1999: 168). The lack of evaluations actually does a disservice to the potential for increased use of restorative justice-based initiatives, and VORPs will continue to suffer from marginalization and underdevelopment until program administrators take their responsibility to document its effectiveness more seriously:

It is an irony that a program which lifts up personal accountability to the degree that VORP does is hesitant or disinterested in holding itself accountable. The potential gains from evaluation in program refinement should outweigh the fear of change (Coates 1990: 133).

Family Group Conferencing and Reintegrative Shaming

Family Group Conferencing (FGC) is a manifestation of the natural decision making capabilities of family groups (Hassall 1996). While the concept is not new, the formal recognition and incorporation of FGCs into New Zealand youth justice and youth protection legislation is only 10 years old. It is the first legal system in the western world to introduce a restorative model of justice by legislation (McElrea 1996). New Zealand had previously left the primary responsibility of youth protection and justice issues to the courts; however, in 1989, the *Children, Young Persons and Their Families Act* demonstrated a radical departure from previous law. Instead of a welfare approach to youth justice and protection, the new Act amalgamated elements of both welfare and justice approaches into a single system, which emphasizes accountability for a youth's offending behaviour, and tailors a response appropriate to the young person's needs,

circumstances and personal history and characteristics (Maxwell and Morris 1993; McElrea 1996). FGCs enable a youth the opportunity to develop in “responsible, beneficial, and socially acceptable ways” (McElrea 1996: 74). The provisions of the Act recognize that even though young people are often victims themselves, they are encouraged to take responsibility for their actions, and avoid blaming others or “the system”. In this way, young people are able to begin taking control of their own lives. Pelikan (1993, in McElrea 1996) notes that the traditional court system is too ritualized, impersonal, produces inner withdrawal, fosters the utilization of defence mechanisms, and discourages responsibility. FGCs, on the other hand, have an educative and socializing effect.

Before restorative principles were incorporated into the youth justice legislation, the origin and development of FGCs is attributed to the pressures exerted by the Maori people regarding youth protection, who felt that “the processes by which decisions were made about their children were alien to their values and traditions and damaged the fabric of Maori society” (Hassall 1996: 22). After a recognition in the seventies of current inadequacies in the administration of youth protection and related issues, “child protection teams” were established by interested community members who voluntarily acted as consultative bodies with the objective of following a more co-operative and participatory model of decision making. The general movement in the eighties sought less state intrusion and more in-family placement consistent with children's safety, or, in the case of young offenders, community safety. Gradually, it became recognized that these teams (now formally termed “family group conferences”) should have a more

central place in the youth protection and justice processes; hence, a Bill was introduced to the New Zealand Parliament and passed in 1989. Although the fundamental reasons for the existence of the law are to protect children from abuse and neglect, and hold young offenders accountable and reduce their risk of re-offending, the most important objective (and the method by which these goals are to be realized) is to strengthen families¹⁰.

The *Children, Young Persons and Their Families Act* reflects the goals and objectives of a changing philosophy of youth justice, which is due to current trends (and tensions) in youth justice practice: disillusionment with the welfare approach, interest in the separation of youth protection and justice issues, an emphasis on accountability and responsibility, the protection of the rights of young people, a shift toward diversionary measures and least restrictive alternatives, deinstitutionalization and community-based solutions, and a reallocation of power and resources from the state to the community (Maxwell and Morris 1993). The new approach can be described generally as an attempt to move “towards a justice approach without abandoning the desire to achieve positive outcomes for young people who offend” (op cit: 2).

Braithwaite (1989) developed the theory of reintegrative shaming based on the question of why people do *not* commit crime. Interdependent persons living in communitarian societies are more susceptible to reintegrative shaming, because of the risk of breaking bonds with, or bringing shame upon those about whom they care. The contention is that “moralizing social control is more likely to secure compliance with the law than repressive social control” (9). In learning how their actions affected and are

¹⁰ See Hassall (1996) for a complete history of FGCs in New Zealand.

discouraged by others, offenders freely choose to comply with consensus-derived social norms, provided the communication of disapproval reintegrates, rather than stigmatizes, the wrongdoer. Also, shaming has the power to “build consciences which internally deter criminal behaviour” (op cit: 75), so as to make external shaming unnecessary in the future, if not initially, through a reduction in an individual’s engagement in offending behaviour. As a general theory, reintegrative shaming theory combines labelling, subcultural, control, opportunity, and learning theories to explain crime occurrence and its most productive response.

Hassall (1996) has grouped the major tenets of FGCs into “four philosophical strands: family responsibility, children’s rights (including the right to due process), cultural acknowledgment, and partnership between the state and the community” (19). The Act’s theoretical objectives are translated into practical reality through the FGC model; thus, “the success of the philosophy underlying the [Act] depends to a large extent on the success of Family Group Conferences” (Maxwell and Morris 1993: 68). The FGC enables mediation between victims, offenders and their families who discuss the offending behaviour and collectively decide on the most appropriate method of reparation and conflict resolution, which is appropriate to the culture of the participants and minimizes state control. A very basic level of participation in an FGC includes the young person, members of his or her family, a youth advocate (if requested by the young person), a police officer (usually a member of the specialist Youth Aid Division), and the Youth Justice Co-ordinator. In approximately two thirds of cases, a social worker also

attends, as do other relatives, whanau, hapu, iwi¹¹, and friends of the family, and when possible, a community work sponsor (e.g., Drug and Alcohol addictions counsellor) (McElrea 1996). Victims reportedly only attend in fewer than half the cases (Maxwell and Morris 1993).

The goal of *diversion* (preventing stigma and labelling associated with a court appearance) seems to have been met in FGCs in New Zealand. Prior to the Act, there were 10,000 to 13,000 court cases each year; in 1990, there were only 2,587 (Maxwell and Morris 1993). In 1988, 262 young people were sent to prison as a result of their court appearance; in 1998, only 70 youth justice beds were available to house young offenders whose crimes are considered serious enough to warrant incarceration¹². These statistics indicate that offenders generally receive sentences more *appropriate* to their crimes (Rock 1985, in Maxwell and Morris 1993).

A second goal of FGCs (and a basic premise of mediation) is to hold youth accountable for their crimes and encourage them to repair the harm done to their victims (Maxwell and Morris 1993). Youth who participated in an FGC initiative in Bethlehem, Pennsylvania, reported no difference in their perceptions of fairness between FGCs and the court process; however, youth did feel they were held more accountable than their court-subjected counterparts (McCold and Starr 1996, in Schiff 1999). FGCs have generally resulted in making young people feel more accountable for their actions, understand the consequences of their actions from the victim's perspective, accept

¹¹ The nearest literal translation of these Maori words is extended family, clan and tribe. But the words carry additional meaning relating to the way Maori society functions and the role these basic kinship units play in social organization (Maxwell and Morris 1993).

responsibility for their crimes, and make a commitment to repair the damage (in comparison to the previous system) (op cit). However, in order to accomplish these objectives, it is vital that young people are present, and feel a part of the proceedings. “Social learning theory demonstrates that difficult goals are more likely to be attained when the learner has control over the process and is involved in decisions about goals” (Bandura 1977, in Maxwell and Morris 1993: 139). The outcomes for FGCs have involved more meaningful and appropriate consequences for youth, including an apology, payment for damages, or work for the victim or community. Two studies have noted very high compliance rates among young people (Wundersitz and Hetzel 1996; Morris and Maxwell 1996; both in Schiff 1999). Even the most serious cases participate in FGCs, and many of these recommendations are accepted by the youth court judge and do not include a prison term. Judging by the significantly lower use of custodial dispositions, it can be argued that New Zealand FGCs have successfully managed to reduce the reliance on incarceration.

As previously stated, one of the main reasons for the development and implementation of FGCs was to strengthen and enhance the well-being of families. A recurrent theme in explaining youth delinquency is that youth conflict with the law stems from family dysfunction (Rutter and Giller 1983, in Maxwell and Morris 1993); thus, the logical solution is to strengthen the ability of families to address their own issues. The attempt to encourage family involvement in decision making and conflict resolution can

¹² Judge McElrea (1998). Paper presented at the Second International Conference on Restorative Justice for Juveniles. Fort Lauderdale, FL.

in turn strengthen the connections between a young person and his or her whanau, hapu and iwi, which is not only consistent with Maori culture, but increased familial, social and community bonds in turn aids in the prevention of offending in the future (Braithwaite 1989; White 1998).

Braithwaite (1989) posits that crime is best controlled when the community is actively involved in witnessing the shame felt by offenders and reintegrating them back into society, which holds the potential for individual reform and broader social harmony (Braithwaite 1989). Families who participate in FGCs are given the opportunity to develop a plan for the youth, which must be considered by the judge (in the event that the case be further referred to court); however, in most cases, the police and the victim have accepted the plan, and a court appearance is avoided. Youth are subsequently referred to appropriate programming to address their underlying offending issues, and the act of identifying the source of the conflict has the effect of encouraging a youth's responsibility for the current and future behaviours. However, research in New Zealand has discovered that only two thirds of families feel very much involved in the process, and only a third of young people feel involved and often limit their participation to a minimum in FGCs, which does not wholly fulfil the Act's intentions (Maxwell and Morris 1993). Families often want more support than they receive in an FGC, such as parenting advice (op cit).

Supporters of VORP have criticized FGC and its inability to weigh victim interests with diversion (Marshall and Merry 1990). Because the "primary arena for meeting offenders' needs is the FGC" (Maxwell and Morris 1993:139), which aims to achieve both welfare and diversion goals, diversion invariably becomes the over-riding

objective and victim interests become subordinate (op cit). However, the effectiveness of FGCs cannot be measured by the VORP yardstick, because in theory, the main objective of the institution of FGCs was to better address the needs of young offenders. Despite the fact that victim participation is not a primary objective of FGCs, youth accountability is, and a victim's limited involvement may have the effect of reducing a young person's feelings of accountability (op cit).

Consensus decision-making is another goal of FGCs in New Zealand. Almost all FGCs (95 percent) end in an agreement about the final decision; however, victims and offenders may have competing interests which may affect satisfaction in (or even the appropriateness of) the outcomes (Maxwell and Morris 1993; Warner 1994). Although families and young people report high levels of satisfaction, (84 percent and 85 percent respectively), there is concern that decisions may be coerced by professionals (whose satisfaction rates are also very high), or even that the involvement of families in decision making may conflict with the requirement to consider the wishes of the young person (Maxwell and Morris 1993). Fewer than ten percent of young people rarely feel as though they play a major role in deciding the outcome of an FGC; for the most part, they indicate that the adults (parents, professionals) do not allow them to be involved, or that they themselves do not believe they have a choice (op cit). The fact that victims and young people (arguably the most important participants) might not be fully involved in the decision making process and are considered "vulnerable" groups, is cause for concern; although, the fact that youth feel even less involved in the court process is only a small consolation (Schiff 1999).

While the Act does not *stop* crime, it works at least as well for serious and persistent offenders as it does for minor and first-time offenders in terms of holding them accountable for their offences (Maxwell and Morris 1993). Diversion from court and decarceration were also primary aims of the new system; both have been achieved. There is very limited information regarding the impact of FGCs on recidivism; although, New Zealand has generally noted a decrease in youth offending rates following the implementation of FGCs (in comparison to adults) (Maxwell and Morris 1993). Maxwell and Morris (1996) report a reconviction rate of 42 percent, and persistent offending among approximately 25 percent of youth, many of whom, were also sent to custody¹³.

Using recidivism rates as a method of measuring the success of FGCs is not only inconclusive, due to the many other factors that can affect re-offending, but also an unfair and unrepresentative indice (due to the many other, perhaps more important, objectives of FGCs). Hassall (1996) has argued that to prevent re-offending behaviour, FGCs must strengthen families, as a prerequisite to achieving this objective. "It is incorporated into the law not only as a means of meeting the primary purpose but because it is considered to be in itself of value" (27). Limiting the measurement of success of FGCs to recidivism rates alone would undermine the actual potential of the restorative model of justice and subject it to the same reactionary solutions used in crime control: an attempt to mask the symptoms of crime, rather than addressing the real problems underlying offending

¹³ However, this study has been criticized for its lack of a control group or pre-test sample (which would determine whether these figures demonstrate a more positive outcome than what might have occurred following the court process) (Schiff 1999).

behaviour. Because the new New Zealand youth justice system has been designed to deal fairly with young offenders, the success of the system

must be measured by its success in dealing justly with young offenders rather than by its success in dealing with other agendas: the prevention of re-offending or the rehabilitation of the offender. The fact that the New Zealand system incorporates elements intended to prevent re-offending and aid rehabilitation does not mean that it should be judged by these criteria (Maxwell and Morris 1993: 140).

Family Group Conferencing in Canada

FGCs in Canada have not enjoyed widespread attention or formal legislative recognition as in New Zealand; and conferencing models vary from the original New Zealand model and between current initiatives. While some are based on the Australian “Wagga Wagga” model¹⁴, other Canadian FGC projects are informed and trained by the American Real Justice organization (which is not to be confused with, but is rather a crude modification of, the Australian Wagga model). Probably the largest difference between FGCs in Canada and New Zealand (in the youth justice context) is the increased involvement of (and in many cases, instigation and ownership by) the Royal Canadian Mounted Police. While New Zealand FGCs reflect a different focus (than general restoration as in VORPs) on strengthening relationships between a young person and his or her family to resolve youth offending, it appears as though some (especially Real Justice-based) initiatives attempt merely to resolve the immediate conflict brought about

¹⁴ The empirical data on the Australian “Wagga Wagga” model is also rather limited, but provides positive evidence of the model’s success: a 50 percent reduction of the youth recidivism rate compared with offenders dealt with in court; 90 percent completion of restitution; and widespread victim satisfaction (Gerard 1996). For literature on evaluations, see Palk, Hayes and Prenzler (1998); O’Connell (1993); Moore (1993); Forsythe (1994). The Reintegrative Shaming Experiments in Australia also noted a large drop in offending rates by violent offenders (by 38 crimes per 100 per year), a very small increase in offending by drinking drivers, and a lack of difference in repeat offending by youth property offenders or shoplifters. See the Australian Institute of Criminology (2000) online at [<http://www.aic.gov.au/rjustice/rise/recidivism/summary/html>].

by the crime in question. Very little attention appears to be paid to the underlying issues that caused the crime (e.g., increasing family functionality)¹⁵. In this sense, it is presumed that these initiatives have a lot of potential to help youth to realize that their actions were wrong, feel accountable, and encourage conflict resolution, but only in the immediate context of the current crime. These types of family group conferences are thus, arguably, less effective in terms of preventing future crime or solving larger problems beyond the immediate offending act.

As in New Zealand, FGCs in Canada are used both as a diversionary technique (pre-adjudication) and at a pre-sentencing (post-adjudication) stage¹⁶; however, many Canadian models appear to be based on the Australian or Real Justice models of FGC, which involve the police, even at the conferencing stage (see Sandor 1994). Two prominent Canadian initiatives exemplify these differing models: The Sparwood Youth Assistance Program in Sparwood, British Columbia, and an FGC pilot project for Aboriginal young offenders in Winnipeg, Manitoba.

The Sparwood Youth Assistance Program began in January 1995 by a Sparwood RCMP officer and lawyer. The purpose of this FGC model, based on the Australian Wagga Model, is to offer an alternative to the court system, “in an effort to reduce repeat

¹⁵ An important and exemplary exception to this criticism is the Family Group Decision Making Project in Newfoundland and Labrador (see Pennell and Burford 1996). In this program, the FGC model is used in the child welfare context, and it has reported enduring success in strengthening families. Upon experiencing shame (in the conference) for not having created an environment of care and safety in the home, many family members began to collectively take responsibility for family health and pool their own resources, as well as seek outside resources (at the community and government levels), to facilitate that endeavour, and encourage growth and positive change. It is assumed that other Canadian FGC projects (including those used in the youth justice context, which may be based more closely on the Australian version of FGC), whose evaluative results are not published, have also experienced similar successes.

¹⁶ Judge McElrea (1998). Paper presented at the Second International Conference on Restorative Justice for Juveniles. Fort Lauderdale, FL.

offences by young persons, increase the role of the police in proactive policing, and bring a greater sense of participation to all concerned” (Purdy and Bouwman 1997: 267).

Although it is stated that since the program’s inception, all youth who have committed offences in Sparwood have been processed through this option, program eligibility is limited to youth who have committed less serious offences, and whose processing outside the court system would not threaten the protection of the public or “bring the administration of justice into disrepute” (op cit: 267). A preliminary evaluation, conducted by the program developers and operators, demonstrates a decrease in offence and recidivism rates, cost savings (that would have been incurred if the matter had proceeded through the traditional courts), high victim and community satisfaction rates, a reduction in the workload by RCMP officers, and an increase in the speed of a formal response in comparison to the courts which, on average, take two months (Canadian Centre for Justice Statistics 1999). Perhaps more importantly, officers have noticed that youth and community relations with the RCMP have improved. The Sparwood Youth Assistance Program is a model example of the positive role that the police can play in enhancing the quality of justice at the community level.

While it can be argued that the program has met its objectives, the larger objectives of FGCs have yet to be realized. Other than some anecdotal evidence referring to one youth’s eventual offer of employment by a victim to whom he provided restitution, a father’s sudden involvement in a youth’s life, and parental encouragement of a youth’s accountability (op cit), there is very little mention of increased family functionality, effective targeting of underlying issues that cause youth to engage in offending behaviour,

youth accountability, the protection of due process rights, or collective decision making and community ownership of justice on a larger scale. These effects seem to occur only as secondary, almost “unintended” benefits of the FGC¹⁷.

A pilot project was instituted in Winnipeg, Manitoba in the early 1990s (see Longclaws, Galaway and Barkwell 1996), and does not involve the police. The purpose of this model of FGC is to provide recommendations to a judge at a young offender’s disposition hearing, as an attachment to the Predisposition Report. The program is intended to incorporate more culturally appropriate responses to Aboriginal youth offending behaviour. The authors voiced disappointment in the lack of interest in participation on the part of Elders, and the limited choice of the time and location of the FGCs, which is often more conducive to social and justice workers’ schedules than that of the family of the offender. As a result, there was lack of family members and victims at the FGC. More importantly, presentation of the recommendations are limited to Predisposition Report format, and thus only a small portion of the information discussed at the FGC can be relayed to the court. While five of the six cases received alternatives to custody (participating youth were not limited to first time offenders), and recommendations to the court included a cultural component (including cultural education programs, probation supervision by an Aboriginal community agency, referrals

¹⁷ Other major criticisms of this Australian-based model of FGC include: the involvement of the police (whose crime-control mandate may conflict with the philosophy of restorative justice); the unnecessary intrusions on certain youth whose involvement in these processes are not justified, based on their backgrounds, the offence, and prior criminal records; and the punitive distortions of reintegrative “shaming” theory in some programs (White 1998). However, these criticisms cannot be made of all FGC programs (especially those based on the Wagga model), nor of all police officers, some of whom have played integral roles in the difficult task of incorporating restorative practices into mainstream criminal justice. Indeed, the presence of police officers at certain FGC conferences can be invaluable in encouraging victim participation and feelings of safety.

to the Native Addictions Council, or attendance at traditional ceremonies), the courts “largely ignored the families’ recommendations” (op cit: 204). Only once was a young person asked to comment in court, and the parents were never asked. “Overall, neither defence lawyers nor prosecutors emphasized or advocated for the FGC’s recommendations to be included in the courts’ orders and the judges never strayed far from the lawyers’ recommendations” (op cit: 204). To an outside observer, it appears as though the main purpose of these FGCs were to serve as an add-on to the existing system, conduct the probation officer’s work, and represent a rhetorical form of participatory justice.

Victim-Offender Reconciliation, Family Group Conferencing, and Community Court Peacemaking Circles: Comparative Differences in Defining Community and Measuring Objectives

“...[I]ncorporating the community variable into the evaluation design invariably complicates the process” (Zehr and Mika 1998: 50).

Due to their individualized and incident-based foci, impact evaluations of VORPs are based largely on quantitative measurements, such as recidivism rates, participant satisfaction with the process, and restitution completion rates. Family group conferences strive to accomplish slightly different objectives, which lie on a family, or personal community level; however, impact evaluations of FGCs (used in a youth justice context) to date have largely not measured one of their most important objectives, which is whether families have been strengthened. While it appears that neither VORP nor FGC evaluations measure their more important objectives, they are also operating at micro levels of attempting to enact change: in individuals, and in families. This is not a

criticism of either VORPs or FGCs; rather, it is a recognition that these restorative processes strive to accomplish slightly different objectives. While these two models may contribute less in terms of geographical community building, they undoubtedly make important contributions to the offender's understanding of the impact of the crime, the victim's healing, and in the case of FGCs, the return of responsibility for problem solving to the family involved, among other objectives¹⁸. It is important that a wide range of restorative processes are increasingly available to victims, offenders, and communities, to accommodate their varied individual, healing, and justice needs, and different types of offences.

Peacemaking circles have a larger, geographical community building focus. Peacemaking circles involve larger amounts of community members and have a task additional to other models of restorative justice. Sanctioning processes are likely to enhance rehabilitation and reintegration when they involve family, victims, and key community members or personal supporters in the process. Restorative processes themselves may accomplish certain immediate objectives, and represent a crucial first step toward reintegration and restoration, that begins with an acknowledgement of harm to victims and the engagement of a support group (Stuart 1995; Bazemore 1999). But the larger rehabilitative goals can be enhanced when these interventions are combined with other community-based relationship-building efforts.

¹⁸ For example, the added privacy offered by a smaller conference, as provided by VORP or FGC processes, may be more attractive restorative models for victims or offenders who may be shy, or not ready to share their victimization or experiences with larger groups. A more private type of proceeding may offer an alternative to those participants who may not otherwise attend a conference at all. In this way, a lack of VORP or FGC options may preclude any healing or restoration for anyone, if participating in a large circle is not desirable.

Due to the focus on the community in peacemaking circles, the evaluative focus must be much broader, and respect the longer-term vision inherent in community building objectives. Evaluative processes must also be situated within the context of the community, to provide an understanding of the starting point, and real progress made¹⁹. With the exception of VORPs conducted with very serious cases (involving incarcerated offenders), FGCs can be largely agreement-driven²⁰, while peacemaking circles are more dialogue-driven to enable the beginning of a healing process, which requires additional time and patience. While victim-offender reconciliation and family group conferencing programs do not reach very far into the past (the cause of the crime) or the future (the creation of healthier existences), peacemaking circle initiatives strive to achieve both. Thus, impediments to this future must be addressed. The success of the future will depend largely on how well with which the realities of the past and the present are attended to and addressed.

While VORPs strive to create processes more sensitive to victim needs, and FGCs purport to divert youth and strengthen families, the primary objectives of Community Court Peacemaking Circles are to mobilize and develop the community, through offender healing, community involvement and empowerment, and sharing power over justice (Bazemore and Griffiths 1997). The intention is to increase the community's capacity to address social issues and resolve community conflicts, which will enable it to work toward eventual self-government. These objectives cannot be reached, and evaluations

¹⁹ For example, increased community functionality is a rationale for many community justice-based processes. The accomplishment of community functionality takes time.

²⁰ While this statement does not describe all FGCs, it is particularly relevant to the Real Justice model of FGC.

cannot be conducted, until the obstacles confronting community-building processes are addressed. Once this occurs, it presumably takes years, perhaps even decades, to develop a community, and thus, accomplish the true objectives of peacemaking circles.

Chapter Three provides an explanation of the impetuses to community-based justice and a discussion of the theoretical underpinnings of Community Court Peacemaking Circles, as well as an overview of the existing research on effectiveness and the issues that challenge the potential success of community-based justice programs.

CHAPTER THREE: COMMUNITY COURT PEACEMAKING CIRCLES: HISTORY, THEORY, AND RESEARCH

Everything that has worked for Aboriginal people has come from Aboriginal people (Cawsey 1993, cited in Royal Commission of Aboriginal Peoples 1993: 191).

Peacemaking Circles: The Social, Political, and Legal Impetuses

Canada's Aboriginal peoples are assuming greater control over the design and delivery of justice services at the community and reserve levels. This is part of a general movement toward self-government and the assertion of Aboriginal rights and sovereignty. It is also a consequence of the seemingly irreconcilable differences between the world view held by Euro-Canadians and Aboriginals, and the differing models reflected in the two systems of law and justice (Griffiths and Belleau 1993: 23).

In the past few decades, many First Nations communities have developed and implemented restorative models of justice as the primary method of responding to and preventing future criminal behaviour and victimization, situating First Nations communities as leaders of the restorative justice movement in Canada (Griffiths and Corrado 1999; Linden and Clairmont 1998). The impetus of this genuine interest is related to the failure of the traditional criminal justice system to address victim, offender, and community needs (op cit), and reduce levels of conflict that First Nations peoples in Canada experience with the system (Griffiths and Hamilton 1996). This is partially observable in the over-representation of First Nations peoples in the Canadian criminal justice system (LaPrairie 1992; Silverman and Nielsen 1992; RCAP 1996), which is a result of discrimination from the arrest stage to incarceration (RCAP 1996; Cawsey 1991;

Griffiths and Hamilton 1996). In addition (and related) to systemic discrimination, three theories account for the over-representation of First Nations peoples in the criminal justice system: cultural conflict; socio-economic deprivation; and the injustices perpetrated on them since colonialism (Law Reform Commission of Canada 1991; Cawsey 1991; Warry 1998; Coates 1991; RCAP 1996). The Aboriginal Justice Inquiry of Manitoba (1991) concluded that the higher rates of crime among First Nations peoples are due to the “despair, dependency, anger, frustration and sense of injustice prevalent in Aboriginal communities, stemming from the cultural and community breakdown that has occurred over the past century” (cited in RCAP 1996: 50).

Understanding the root causes of Aboriginal crime, and locating them in the history of colonialism, points to the need for a new and improved relationship between First Nations and Euro-Canadians (e.g., through self-government), and more productive, and long-term methods of addressing past and present conflicts (e.g., through community-based, healing justice) (RCAP 1996).

LaPrairie (1992) outlines the relationship between the Federal and Yukon Territorial Governments and the Yukon First Nations. Since no Treaties were signed between the governments and the Yukon First Nations, the land claim process has been a priority for the Federal and Yukon Territorial Governments since the early 1970s. In April 1990, an Umbrella Agreement for final settlement of land claims was reached in the Yukon, which commits the federal and territorial governments of the Yukon to negotiate

self-government arrangements. Of the seventeen Yukon First Nations¹, seven have finalized agreements with the Territory.

Land claims and the self-government agreements deal with virtually all aspects of culture, government, resources, land control and management. It has been suggested that some First Nations will not separate justice from other institutions such as education, social services, health, traditional activities, etc., and develop a more holistic vision of justice that incorporates law making (with the exception of Criminal Code matters), enforcement, crime prevention, and responses. First Nations face the task of negotiating justice boundaries and developing and assessing appropriate initiatives. While there is variation in the priority of justice issues among First Nations, the signing of self-government agreements may raise the profile of justice and create a sense of urgency among First Nations to access funding and initiate local justice activities. First Nations are faced with the decision of whether to incorporate traditional practices and methods, or to what extent, considering the context of contemporary (and in many cases, mixed) communities. Due to jurisdiction, local Aboriginal justice systems will only affect those who live on settlement land (LaPrairie 1992).

The relationship between the Territorial and Federal Departments of Justice and the First Nations is characterized by cynicism, distrust, and skepticism of the two levels of government by the First Nations. Justice Canada has two main Aboriginal administration of justice interests, which include self-government agreements, and the

¹ Including those First Nations in northern BC, within Yukon Territorial Government's jurisdiction (Land Claims Negotiator 2001).

federal Aboriginal Justice Initiative. While the latter can financially support initiatives, the Territorial Department of Justice can only contract with a First Nation in areas such as crime prevention and probation, or other services within the Territorial jurisdiction (op cit).

Nine Yukon communities are currently operating community justice projects, which range from family group conferencing, to tribal justice based on the Clan system, to circle sentencing (Community Justice Links 2000). Many of these initiatives are jointly financially supported by the Yukon Department of Justice and the federal Aboriginal Justice Strategy (Yukon Department of Justice 1998).

The legal impetus supportive of community-based alternatives to the criminal justice system and incarceration is reflected in recent amendments to the Criminal Code. In 1996, the proclamation of Bill C-41 legislated alternatives to incarceration, or conditional sentences, which are now sanctioned as a form of adult diversion in Section 717 (Lilles 1997). Second, the importance of addressing the special needs of First Nations offenders during sentencing, in recognition of the effects of colonialism, the systemic discrimination of Aboriginal peoples, how the Canadian criminal justice system has failed the Aboriginal peoples of Canada, and the ineffectiveness of incarceration for Aboriginal peoples, was also legislated in 1996, in Section 718.2 (e) of the Criminal Code. It states that sentencing courts must take into consideration all alternatives to incarceration for all offenders, and in particular, Aboriginal offenders, for restorative justice approaches, because of its consistency with culturally-specific healing needs. In 1999, *R. v. Gladue* reinforced this provision, as it was rarely relied upon by sentencing

judges and counsel (Turpel-Lafond 1999). In 1997, the Supreme Court of Canada recognized, through the Delgamuuk decision, that Aboriginal peoples were once “independent nations with...their own practices, traditions, and customs” (Cayley 2000: 41), and that First Nations have the right to continue these traditions, which include a distinctive understanding and practice of law. Finally, the Federal Speech from the Throne contained an explicit acknowledgement of the importance of restorative justice in Canadian society in 1999 (Latimer and Kleinknecht 2000).

First Nations Youth and their Over-Representation in the Criminal Justice System

“The impetus for the development of restorative programs for youth has been provided by the high rates of Aboriginal youth in conflict with the law” (Griffiths and Corrado 1999: 247). First Nations youth are over-represented, and more likely than non-First Nations youth to be placed in youth correctional facilities and with child welfare agencies (Ontario Native Council on Justice 1981; Jolly 1983; both in LaPrairie 1988). Youth incarceration rates are equal to and even exceed those imposed on First Nations peoples generally (Lilles 1995); and, First Nations youth are doubly over-represented in Canadian custodial institutions (Ontario Native Council on Justice 1981, in LaPrairie

1988)². Compared to non-First Nations youth, First Nations youth are generally in conflict with the law more often, at an earlier age, and are more likely to be repeat offenders (Minore 1992, in Silverman and Nielsen 1992). Other statistics demonstrate systemic discrimination through the imposition of harsher treatment by justice system professionals, manifested in First Nations over-representation in closed custody, and their under-representation in alternative measures programs (Cawsey 1991; Linn 1992; Federation of Saskatchewan Indian Nations 1996).

Perhaps the saddest fact and the best starting point for a review of Aboriginal justice is the reality that Aboriginal youth have a better chance of going to jail than they have of completing high school. The fact is that Aboriginal youth are routinely streamlined into lives of unemployment, incarceration, poverty, and suicide (Linn 1992, cited in Federation of Saskatchewan Indian Nations 1996: ii).

First Nations Youth and the Effects of Colonialism

Although discrimination by the justice system has been a factor in First Nations over-representation within the system, First Nations youth also suffer from the cultural genocidal effects of the residential schools and other assimilationist efforts that resulted in the destruction of traditional lifestyles and economies. “The dual processes of colonization and under-development have created a welfare ghetto and a status of social,

² Canada incarcerates Aboriginal people at a rate which doubles South Africa’s rate for black people (Lilles and Stuart 1992). At least 90 percent of offenders in criminal court in the Yukon are being charged for alcohol-related offences, and a large proportion of persons are incarcerated in the Yukon because there are no appropriate places or programs for them (op cit). The Yukon has the highest rate of youth in conflict of all Canadian territories/provinces, followed by the NWT, Saskatchewan, Manitoba, and Alberta, which also have high Native populations (Canadian Centre for Justice Statistics 1999). Forty six percent of all guilty findings in youth court in the Yukon were sent to custody (the second highest rate among the provinces/territories) (Canadian Centre for Justice Statistics 1999); and seventy per cent of youth in custody in Whitehorse (YT) are First Nations youth. In Alberta, 87 percent of those incarcerated under the age of 15 are Aboriginal. Of the total incarcerated young offenders in Alberta, 65 percent are Aboriginal. In Territorial Youth Courts of the Northwest Territories, 90 to 100 percent of people before the court are Aboriginal (Standing Committee on Justice and Legal Affairs 1997).

political and economic marginality for the majority of aboriginal people” (LaPrairie 1988: 160). The nature of economically deprived and marginal community living perpetuates problems that may lead to delinquency (op cit). The after-effects of mission schools and the generally disorganized state of many communities is seen in family violence, alcohol and drug abuse, violence, sexual and emotional abuse, high rates of suicide, mental illness, poor parenting, and general feelings of despair, inferiority, and dependency upon welfare and government (LaPrairie 1988).

The decline in Aboriginal culture and community cohesion has meant that for this group, life is often confusing and dislocating, with little hope or expectation for change. Research on aboriginal delinquency has pointed to culture conflict, boredom, loss of parental discipline and feelings of hopelessness on the part of Aboriginal youth as the primary causes of delinquency (LaPrairie 1988: 161).

Other factors such as few employment, educational, and recreational opportunities contribute to crime among youth (op cit). First Nations youth appear to face greater obstacles regarding educational attainment, employment opportunity, living skills, self-awareness, and interpersonal skills than non-First Nations youth. By the age of six, most First Nations children will have lost two significant people in their lives, which has a negative impact on social and emotional maturation as well as personal development (Gabor, Thibodeau and Manychief 1996). The effect of the mission schools on their parents and grandparents has diminished the use of oral tradition to pass on cultural beliefs and values, and undoubtedly adversely affected the current generation of First Nations youth. Young people experience conflicts between their ethnic values and those prevalent in the mainstream culture (Gabor, Thibodeau and Manychief 1996), and the identity conflict and lack of traditional values contributes to their offending behaviour.

Difficulties in identity development and psychological adjustment are compounded by pervasive negative stereotypes projected by the majority culture, which in turn promote feelings of cultural inferiority and denial (Culleton 1992; Tyman 1995). Feelings of alienation from their own and mainstream cultures, economic impoverishment, and a high degree of contact with social welfare agencies (especially non-First Nations) collectively increase a youth's propensity to be in conflict with the law (McCaskill 1970 in LaPrairie 1988).

The fact that many Aboriginal youth in conflict are themselves victims of a larger historical, cultural, and economically disadvantaged context, serves to partially explain offending behaviour. In this sense, *victimization is not exclusive to the victim of the immediate crime*. "Victimology stresses the homogeneity, the affinity and the similarities between the two populations [victims and offenders]" (Fattah: 1993: 23)...[and] "considerable evidence exists that the experience of being victimized increases the propensity for offending..." (Fattah 1993: 8). Consistent with Fattah's (op cit) recognition of the "cycle of violence"/victimization and its correlation with offending behaviour, Dr. Rod McCormick, Director of the Native Indian Education Program at the University of British Columbia, explains the impact of intergenerational trauma theory on First Nations youth:

I guess the overwhelming response to being a victim, probably the strongest emotion, is anger. If anger isn't dealt with, and it's passed down from generation to generation, not identified, examined, or worked through, then that's going to affect youth; because that anger either gets internalized, and people get involved in self-destructive behaviour, like drinking and suicide, and dangerous activity. The anger can also be externalized, and people get involved in violent actions toward others (destroying things and hurting other people). So that's a real factor. If

you're inheriting all these problems from your parents, and they inherit them from their parents, then there's probably a much better likelihood of criminal activity. This all stems from colonization and the residential schools. It's internalized repression; if you've constantly been told, "your culture's no good", you internalize that, and feel that you're no good. And that can cause you to feel angry and resentful. If your people are the poorest people, and the majority on the reserve are not employed, and have the worst health conditions, the reaction is to be angry. You begin to ask yourself: "Why is this this way? Why have I inherited this?"³.

Whether the underlying issues of First Nations youth are a combination of family dysfunction, a lack of cultural identity, negative peer influences and role models, an unhealthy environment, inadequate parenting, alcohol and drug abuse, sexual/physical/verbal abuse, a lack of cultural pride and self esteem, and intergenerational trauma, these elements are symptoms of the larger historical victimization and cultural genocide of First Nations peoples, and a direct result of European colonialism. These "significant social experiences" (Fattah 1993: 9) leave a "permanent mark" (op cit) on individuals, and may play a major role in offending behaviour.

LaPrairie (1989) argues that the social disorganized status of many First Nations communities and the resulting challenges in community mobilization make it difficult for First Nations communities to develop community-based alternatives to incarceration and the justice system in general. This is especially problematic, since it is these communities which are most in need of more holistic and culturally specific community-based programs for First Nations youth. Ironically, it is these same communities which are least able to develop or sustain them. According the LaPrairie (1989), the political and social

³ Rod McCormick (1997).

marginalization, economic “underdevelopment”, and imbalances created by structural inequalities need to be redressed, to better address the issue of Aboriginal youth conflict with the law.

Justice As Healing

“Native people need to heal. And spirituality is the way for the Native people to start healing...” (Huber and White 1992: 254). First Nations peoples across Canada are beginning to deal with the devastating after-effects of colonialism, cultural genocide, mission schools, the imposition of foreign law and justice on their societies, and the resulting overrepresentation of their peoples within the justice system. “Increased concerns have been raised about the effectiveness of adversarial systems of criminal justice, particularly where these systems have been ‘imposed’ on cultures which traditionally utilized mediation, negotiation and other forms of dispute resolution”⁴ (Griffiths and Patenaude 1992: 69). This resurgence of interest in traditional, community-based justice structures has been accompanied by increased involvement of communities in the delivery of justice services and in the use of non-adversarial approaches to maintaining peace and restoring order (Griffiths 1996).

...An ancient conviction shared by a great many Aboriginal peoples [is] that the best way to respond to the inevitable ups and downs of life, whether defined as “criminal” or not, is *not* by punishing solitary offenders. The focus must be shifted instead towards the teaching and

⁴ James (1993) compares the “linear” system of non-Aboriginal culture to the “circular” system underlying Aboriginal thought. Sentences handed down through a western judicial process do not address the underlying dysfunction. In First Nations culture, a prevention of the recurring problem must be addressed, in order to arrive at a solution. The difference lies in the attempted removal of the problem (i.e., the individual) versus the solving of the problem. The underlying dysfunctions in First Nations healing are addressed by using a “holistic” healing circle procedure, wherein the entire family and community take responsibility for, and become equally and actively involved with the individual in question.

healing of all the parties involved, with an eye on the past to understand how things have come to be, and an eye on the future to design measures that show the greatest promise of making it healthier for all concerned (Ross 1996: 15).

The Incompatibility of Western Law and Justice with First Nations Worldviews

...[I]magine that our two cultures are represented by a skin diver and a moon walker. Because they lived and worked in different environments, they developed different footwear to suit their needs. The moon walker created heavy boots, because there is less gravity on the moon. Without them, he would float off into space. The skin diver needed his swim fins to propel him through the denser atmosphere of the ocean. Without them, his ability to move about was severely restricted. As long as each stayed within own footwear, in his own environment, they could move easily and well. If, however, the skin diver were forced to put on weighted moon boots, he would be at risk of drowning. Similarly, if the moon walker changed to swim fins, he would likely float off into space. In either case, each would be likely to come to grief if forced to wear the other's footgear.

Suppose, the metaphor continues, the moon walker was not aware that the skin diver operated in a totally different environment, just as the first settlers to arrive in North America were unaware of Aboriginal worldviews, languages, spirituality, governance and the like. Suppose as well that the moon walker, believing in the "rightness" of his own ways, tried his best to get the skin diver to kick off those fins and wear moon boots instead. Suppose, like the settler nations coming to North America, they used everything from persuasion and ridicule right through to legal prohibition. After a time, the skin diver might finally be pressured into taking off his swim fins (at least while the moon walker was watching!). When he did that, however, he would not have traded environments at all. Instead, he would have been robbed of his capacity to swim successfully on his own.

Given enough time, his reduced mobility and his loss of power, confidence and self-esteem would destroy even his *wish* to move. He would begin to lose even more of the access he once enjoyed to his own environment, his capacity to explore it and rejoice in it. Instead, he would begin to live cut off from anything that gave life its purpose, its thrill and its potential for awe.

Within that metaphor, the Western world has indeed done everything it could to force Aboriginal people to discard their traditional footwear. Our imposition of residential schools is but one example. When children disappeared into those non-Aboriginal institutions, everything was new. Instead of being encouraged to develop personal qualities and wide notions of responsibility, they found themselves trained into unthinking acceptance of codes of “right” behaviour established by others. Instead of a “Natural Law” of interdependence requiring that they connect with each other as co-adventurers, they were trained into seeing each other as rivals and competitors. Instead of learning about humility and deference, they were trained to start thinking of themselves as “better than” or “worse than” their fellows (Ross 1996: 268-269).

A different worldview leads to a different perception of crime, which begs for a different response to wrongdoing, and a unique conceptualization of “justice”. The Assembly of First Nations explains the holistic approach to justice:

Even though the First Nations do not adhere to a single world view or moral code, there are nonetheless commonalities in the approach of all First Nations to justice issues. A justice system from the perspective of First Nations is more than a set of rules or institutions to regulate individual conduct or to prescribe procedures to achieve justice in the abstract. ‘Justice’ refers instead to an aspect of the natural order in which everyone and everything stands in relation to each other. Actions of individuals reflect the natural harmony of the community and of the world itself. Justice must be a felt experience, not an intrusive state of order, imposed from the outside, and separate from one’s experience of reality.

Justice for First Nations has traditionally been the daily, shared experience of citizens of the community, part of general teachings, values and traditions that sustain the people as a people. In short, it has been part of the overall fabric of First Nations lives, and part of the sense of responsibility felt by every community member for the other and for the creatures and forces that sustain all human life. Justice is not a concept easily separable from other concepts that make up the ways by which First Nations have come to know themselves and the world. Nor is it static. It evolves as a First Nation grows and adapts to changing circumstances, so that harmony and balance are maintained (AFN 1993 cited in RCAP 1996: 3).

Ross (1996) provides a comprehensive description of the general intricacies of First Nations thought⁵, from a non-First Nations perspective⁶. To create separate justice processes, some First Nations communities are in the process of reviving traditional values. Discussions on traditional First Nations methods of resolving conflict explore the social and traditional aspects of First Nation life, which served to prevent conflict. These discussions range “...from child rearing to hunting and fishing, storytelling, naming, cosmology, ceremony, the importance of family and clan structures and the impact of the residential schools” (Ross 1996: 253).

Within traditional Aboriginal understanding, a justice system involved far more than simply controlling how disputes were handled after they broke out. Instead, the primary emphasis was on teaching individuals from birth how to live together in ways that avoided or minimized them in the first place (Ross 1996: 256).

In traditional times, values were taught, and passed on, and they contributed to a peaceful society that had very little need for “corrections”, or sentencing by a “neutral” third party. Those who offended against others carried the responsibility of creating their own responses, also governed by traditional law, to compensate. Traditional justice involved prevention in all its forms: socializing community members so they would

⁵ It is understood that there are many variations in culture and worldview among First Nations. At the risk of over-generalizing, the general worldviews presented here serve to provide only a basic understanding of what some of these beliefs may be. The extent to which individual First Nations peoples in the research community know of, or subscribe to, traditional teachings or values is partially due to colonialism, and the effects of cultural imperialism, industrialization, and modernization. Subscription to traditional beliefs is also based on choice. However, the impetus for transformative justice is only partially based in its relative consistency with traditional beliefs, and the success and popularity of transformative methods are not reliant on the extent to which tradition is revived. A fairly common belief, voiced often among research respondents, was the value of traditional healing and its connection with and potential to address criminal behaviour.

⁶ Ross's (1996) discussion is particularly useful in the context of this thesis, as the latter is also written from a non-First Nations perspective. Ross (1996) explains the differences between western and First Nations worldviews, from the perspective of the western thinker. It enables the reader to gain a cursory understanding of the differences in worldview, from a familiar starting point. This section is thus heavily reliant on Ross's book, *Returning to the Teachings: Exploring Aboriginal Justice*. Toronto: Penguin Books.

understand the rules and that they were expected to follow them, and creating healthy living conditions to prevent wrongdoing. Thus, First Nation law and justice were not prescriptive, or written rules, about what people should not *do*; rather, they were values-based, oral teachings about how people were expected to *be*, as individuals and as members of a group, which were reinforced in every aspect of life. Ceremonies, the language, stories, and traditions all reinforced traditional values. Teachings also expressed potential consequences if those duties were not performed (Ross 1996).

Since colonialism and the mission schools, First Nations peoples have had to take large steps backward to understand traditional laws and values, and it is upon these values that new processes and practices will be based to restore harmony in First Nations communities, and deal with the issues that confront them today. When the values are identified and a discussion ensues about fostering traditional values, “only then is it appropriate – or even possible – to turn the discussion towards devising processes for responding to people who have lost or denied the teachings, and those processes themselves must demonstrate allegiance to the teachings” (Ross 1996: 266).

Thus, traditional values must be re-instilled, not only to govern how First Nations communities organize themselves and live day by day, but also to guide how they respond to wrongdoing that inevitably does occur.

Crime and Justice from an Holistic Worldview

People who offend against another...are to be viewed and related to as people who are out of balance – with themselves, their family, their community and their Creator. A return to balance can best be accomplished through a process of accountability that includes support from the community through teaching and healing. The use of judgment

and punishment actually works against the healing process. An already unbalanced person is moved further out of balance (Ross 1996: 171).

Ross (1996) asserts that one of the most serious gaps between western and First Nations thought is the different perception of wrongdoing and how to best treat it. Western punitive approaches to crime are based on the assumption that the individual is a bad person and therefore must be punished. First Nations peoples believe that a wide variety of misbehaviours may indicate that a person is drifting away from supportive relationships with family, friends, and community members. For example, alcohol abuse is only a symptom of a much deeper problem which, if left unaddressed, only persists and leads to further abuse and conflict.

Western theories of crime causation are inadequate explanations of the First Nation belief in the interdependencies of all things, and punitive, crime- (i.e., symptom-) and offender-focused justice solutions also fall short of the holistic approach required to address conflict and crime. The principles of wholeness and interconnectivity serve to partially *explain* First Nations perceptions and responses to wrongdoing. Due to the law of interconnectivity, Creation demonstrates principles of mutualism, interdependence, and symbiosis, which translates into several obligations for humans: to demonstrate respect, to offer support, and to work towards cooperation.

Each criminal act affects many people, in many ways, and justice must involve repairing those injuries and restoring balance to those people. If the imbalances are not attended to, the pain spreads and affects other relationships, touching infinite numbers of people, and ultimately, returning in a vicious cycle. Many First Nations peoples believe that taking responsibility comes from learning directly from others, how they were

affected. By appealing to an offender's four dimensions of the self, s/he actually feels some of the pain, grief, outrage, sorrow, or other emotions caused in others.

The principle of wholeness relates to justice, in that "when people cause problems, a justice system [must] investigate all the factors that might have contributed to the misbehaviour" (Ross 1996: 64). This means that the investigation and understanding must go back in time, and laterally, to the offender's family and friends. The plan of action involves efforts on the part of the offender to address his/her problem, as well as the whole community to do what they can about their problem. Because disharmony affects all, it is considered to be everyone's disharmony.

...The principle of wholeness thus requires looking for, and responding to, complex interconnections, not single acts of separate individuals. Anything short of that is seen as a naïve response destined to ultimate failure (Ross 1996: 64).

The principle of wholeness of the individual involves remembering that people who offend have many facets; their offending behaviour should not be used to label them as people. In punishing offenders, their more positive qualities are also punished, which can destroy them.

Many First Nations peoples insist that the justice system must look beyond the particular crime and try to examine all the events and forces that lead up to it. It requires an understanding of all the waves that "have converged on [offenders] during their lives" (op cit: 74). Many of the waves will continue to exist, and affect the individual; thus, new skills are required that will facilitate riding those waves more successfully in the future. Colonialism was the first wave, and while it is not identified for the purpose of placing blame, it does provide insight into the challenges confronting First Nations

peoples today. An understanding of the waves also provides an explanation of how determinism and free will both affect people and their actions. Ross explains that “while you cannot control the waves, you can control how you meet them and attune yourself to their energies” (1996: 76).

It is Western belief that each individual has control over his/her own destiny. First Nations worldviews consider this belief to be simplistic and dangerous. Because of the belief in interconnectivity, individuals are not perceived to be powerful enough to swim against currents of the past and present alone. “A society that makes such assumptions and then deals with its own problems by examining only the isolated acts of solitary individuals is seen as somewhat naïve and at risk of experiencing an escalation in problems” (Ross 1996: 210).

When considering First Nations views on wrongdoing, the application of western responses is non-sequential. “Almost every aspect of our western approach to justice breaks traditional Aboriginal law” (Ross 1996: 12). The following western beliefs are inconsistent with First Nations values and worldviews:

- believing that offenders can be dealt with individually, through rehabilitative or retributive methods;
- believing that offenders can stop their antisocial behaviours on their own;
- focusing on the act of wrongdoing, or the symptom as the problem;
- trusting adversarial processes as responses to conflict;
- labelling, stigmatizing, and alienating offenders;
- considering a plea of guilty and serving a punitive sentence as taking responsibility;
- relying of professionals, or third party strangers to resolve conflicts

Traditional law, on the other hand, believes that justice processes must involve all those involved with the offender and victim; consider the past of each offender and work

toward helping him/her to address underlying issues; heal relationships with the four aspects of the self, and others; bring health and understanding back to those relationships through collective problem solving; work with offenders to help them to realize they have worth and dignity and can overcome their challenges; encourage offenders to take responsibility for their acts by understanding their own pain and the pain they have inflicted on others; and rely on the use of community members and those involved in the conflict to resolve it (Ross 1996).

Traditional Justice in Tlingit Societies⁷

While the catalyst for restorative justice in Canada has largely been Aboriginal, it is an oversimplification to romanticize that, prior to European colonialism, First Nations communities were living in peaceful harmony within and between tribes. In traditional First Nations societies, conflict presented a problem to group cohesion and survival; therefore, it had to be solved by the group (James 1993; Nielsen 1992). Disorder was addressed through restorative action (Cawsey 1991), as reimbursement, replacement and reconciliation were important elements for regaining the “balance” within the group, and restoring community harmony (James 1993).

Price and Dunnigan (1995) describe the role of peacemaking in traditional Aboriginal methods of resolving intra- and inter-tribal conflicts. Elaborate peacemaking ceremonies were held to work through disputes, especially those involving the loss of life (op cit). Traditional behaviour norms among the Inland Tlingit (whose people now inhabit

Alaska and Canada's northwest regions) implied the expectation that individuals maintain peaceful relations with others within their own and with other tribes, regardless of their true feelings (op cit). Gift-giving customs and diplomatic methods of trade and alliance with Europeans were also integral components of peacemaking systems. Modern manifestations of peacemaking ceremonies hold promise because the traditional value of mutual interdependence is revived and reinforced. It is perceived that if a community member is "out of balance" with him/herself, s/he is not be conforming to group expectation and causing conflict; this threatens the balance of the group, and thus, group survival (Nielsen 1994, in Price and Dunnigan 1995).

According to Oberg (1934), Tlingit societies used restitutive methods to address conflict, and although imposed for the purpose of equal compensation, the by-product of the repayment was not entirely void of punitive, painful, or stigmatizing outcomes. Clans were characterized by hierarchical relations, and very strict and separate rules governed reparation within and between Clans, depending on the transgressor's position in the hierarchy. Reparation was made not only to compensate loss, but also to neutralize the shame imposed on an offender's Clan⁸, and to restore its honour.

Criminal acts were differentiated from shameful acts: criminal acts were politically or legally prohibited, and shameful acts were connected either with etiquette, morals, religion, or economy. While crime was punishable by measures taken against the

⁷ Tlingit is the culture of the participating research community.

⁸ Adultery between Clans was punishable by death, except when the adulterer was of very high rank. In such cases, the husband's own Clan gave his goods to pacify him, so he would not demand the death of his wife's lover (demanding the death of a high ranking man was a very serious matter). His wife's Clan would also give him property. These two transactions were performed at a gathering, and known as "tuwatak'ayawaci", meaning, "they wipe the shame from my face" (Oberg 1934: 149).

life and property of the individuals of a Clan, the shameful act was punished by ridicule⁹. There was no penalty for murder, adultery, or theft within Clans, but when transgressions occurred between Clans, a man of equal rank to the victim was often killed (from the offending Clan) to compensate for the loss or injury¹⁰. If an offender was of high rank, a payment of goods brought status back to him/her, and he rarely suffered a loss of rank; thus, offenders with less riches (and thus less leverage), if they were not killed for the crime (depending on its nature)¹¹, were sometimes subjected to slavery (within their own or for the injured Clan) as repayment (Oberg 1934).

After the settlement of a dispute through execution or a payment of goods, the matter was closed by a peace dance, involving the two feuding Clans. The whole village attended the ceremony, and various rituals were taken part in, which symbolized peace, humility, happiness, and plenty. Subsequent to the ceremony, certain members fasted, and a pow-wow type of ceremony followed. In this way, peace was publicly proclaimed and conflicts were laid to rest (see Oberg 1934).

Certain social characteristics emerge from the laws and methods of sanctioning Tlingit transgressors of social norms. Most important to Tlingit people is the fact that they are members of a Clan, and the Clan carried importance as a sovereign group.

⁹ So effective was ridicule, that the performer of a shameful act often died as a result of social disapproval (Oberg 1934). Forms of ridicule included: being the subject of gossip, having ludicrous representations of the offender carved on a totem pole, or being called a white man (which was considered the height of public censure!).

¹⁰ The survival of the Clan was ensured in this manner. If a man of high rank (i.e., high value) was killed, the offending Clan would lose an equally "valuable" member as repayment. However, if a man of high rank killed a man of low rank of another Clan, the murderer generally went free.

¹¹ A clan punished its members by death only when shame was brought to its honour; although, to die for the honour of one's Clan was considered an act of great bravery, and the body was buried as that of a great warrior. Crimes punishable by death within the Clan included incest, witchcraft, marriage with a slave, and prostitution. Murder among the Tlingit was punishable by death when committed outside the Clan.

Second, individual status within the Clan was very important, and transgressions not only threatened an offender's position within the Clan, but also brought shame onto the entire Clan (if the injured party was of another Clan). Responses to offending behaviour thus had more to do with an individual's position than with the offence. Social norms were enforced in that individuals who committed certain offences, risked their rank or title; conformity thus secured position. Injuries upon individuals were considered to be injuries against the whole Clan; thus, crime against individuals did not theoretically exist, as the whole Clan suffered and was involved in repayment (e.g., offering the life of an individual of equal standing)¹². Complex and intricate laws and sanctions served to maintain the hierarchy and status quo (i.e., "restore harmony") within Clans, and preserve the Clan's honour. Principles inherent in their peacemaking processes included reparation for wrongdoing, interdependency, respect, addressing victim needs, and restoring harmony and honour.

It appears as though reparation in pre-colonialist Tlingit societies is not entirely characteristic of "restorative justice" as it is interpreted today. However, while the processes are different (as were the laws and the times), the values remain very much the same. This is perhaps the reason why many First Nations peoples argue that while traditional practices cannot necessarily be re-instituted, the values that guided them can (RCAP 1996).

¹² See also Jensen (1995), who compiled an oral history of the laws regarding marriage, childbirth and training of children, the potlatch, the environment and treatment of animals, and the consequences of (punishments for) breaking the laws. She also briefly explains the clan system, leadership, clan names and crests, values and beliefs. Much of the information included in Jensen (1995) supports the information provided by Anthropological accounts, but in further detail, and through primary sources.

Jensen (1995) asserts that sharing and respect were two major values, which guided behaviour. Engaging in these principles guaranteed to the actor that they would be reciprocated in the future, thus ensuring his/her survival. These values persist today; it is believed that all values, beliefs and laws that comprise the Inland Tlingit (and other Yukon First Nation) worldviews can be categorized under the value of respect (for the land, the animals, the plants, all people, and oneself), which binds people together and fosters harmonious relations (Jensen 1995). Traditional methods of resolving conflict reflected the belief in the restoration of harmony, and that this responsibility was shared among the community (Sharpe 1998). The Nares Mountain Wilderness Camp (of the Yukon Territory) trains peacemakers in the following core values, which are consistent with tradition, and which surround the main principle of Unity, or Oneness: Respect, Honesty, Sharing, Strength, Humility, Faith, and Love (Nares Mountain Wilderness Camp 1998).

Peacemaking Criminology and Aboriginal Approaches to Healing: Revitalizing Justice

No amount of thinking and no amount of public policy have brought us any closer to understanding and solving the problem of crime. The more we have reacted to crime, the farther we have removed ourselves from any understanding and any reduction of the problem (Quinney 1991: 3).

Quinney (1991) believes that the current criminal justice system is founded and operates on violence, and thus breeds violence. Crime is a manifestation of suffering, and passes suffering onto others; thus, to add to an offender's suffering, the problem persists and worsens (op cit). Rather, love, compassion, and empathy are required to gain an

understanding of “the criminal”, to enable ourselves to feel the offender’s pain, and commit to achieving pain alleviation for all.

To end human suffering, eliminate crime, and achieve justice, a transformation of the self, perspective, and our social, economic and political structures is required through non-violent and peaceful measures (Pepinsky 1991; Van Ness and Strong 1997).

Alternatives to incarceration are necessary; however, they must be “open – participatory, democratic rather than hierarchical, compassionate rather than judgmental, inviting rather than coercive, usually operating by consensus rather than by patriarchal management” (Pepinsky 1991: 315) to accomplish peacemaking objectives and provide a more productive approach to conflict.

Taraschi (1998) draws important parallels between the theory of peacemaking, as it serves to revitalize criminology, and Aboriginal justice initiatives, as they serve to revitalize the quality of justice for First Nations peoples. Both movements are based in spirituality, and strive to transform people, relationships, and the conditions that give rise to conflict, toward healing and eventual individual and community peace. Punishment is seen as ineffective and perpetuating power imbalances in society, and contributing to crime. Like peacemaking criminology, First Nations peoples consider offending behaviour within the context of oppression, and the centuries of violence, dehumanization and discounting of traditional Aboriginal ways, and the near-genocide of First Nations people. Neither approach is based in quick-fix solutions to social structural problems, which are the major causes of violence and crime (op cit). Similar to the intents of First

Nations communities in developing more culturally appropriate justice initiatives and revitalizing their culture and communities, subsequent to colonialism,

The arrival of peacemaking in criminology reflects...that basic needs were being denied by current social arrangements, including processes intended to bring about justice. Our current images of what constitutes justice can no longer be tolerated for they no longer promote processes and social arrangements that lead to justice ... Within the Aboriginal justice initiative, the native way of life is upheld as an essential strategy to counter the intrusiveness of the conventional structures of justice for First Nations people (Taraschi 1998: 109, 114)....

...Given their mission to make the experience of criminal justice more meaningful for First Nations people in conflict with the law, these initiatives are a clear response to dissatisfaction within the conventional structure of justice and thus represent a “deliberate, organized, conscious effort by members of society to construct a more satisfying culture” (Wallace 1956, cited in Taraschi 1998: 114).

Modern notions of peacemaking serve to address underlying conflicts that have given rise to conflict and crime. Peacemaking involves teaching and healing, and creating healthy relationships, between all those involved, and within the mental, emotional, physical, and spiritual dimensions of each of them (Ross 1996).

Once I started to gain some understanding of those different kinds of justice goals, it became easier to understand why disruptive acts themselves might no longer occupy centre stage within a peacemaking process. While they can serve as clues to the degree of disharmony and alienation afflicting the life of the offender, that’s essentially all they are. The real issue is how such states of disharmony have come into existence and what can be done to turn them around. That issue involves a more detailed and wider-ranging inquiry, as well as a different set of judicial responses at the end of the justice day (Ross 1996: 96).

Transformative Justice and Community Development

You cannot conquer violence by treating the violence of oppressed people in isolation from the continued violence of their oppressors (Pepinsky 1991: 319).

Ruth Morris (1994) first coined the term “transformative justice”,¹³ and asserts that crime is not only a violation of people and relationships, but it also offers an opportunity for “a transformation of those people and relationships that can deal with the causes of crime, and in that way, increase safety in the community” (71). According to Sullivan, Tiff, and Codella (1998), it is at the point of transformative justice that the restorative justice and peacemaking criminology movements find their common ground. Both perspectives argue that justice should not involve the employment of power, control, or violence as a means of correction.

However, it has been argued that most restorative practices that seek to accomplish the objectives of repairing harm and involving victims, offenders, and communities in resolving conflict rarely venture beyond the immediate conflict, and “tend to be confined to very specific incidents and particular individuals” (White 1998: 17):

...Most alternative justice programs appear to focus on relational aspects of conflict exclusively, without regard for social and community problems that shape crime and victimization (Zehr and Mika 1998: 50).

Less attention is generally paid to the patterns of social inequality or disadvantage which make both victims and offenders, and indeed their communities, more prone to the experiences of criminal harm and to the processes of criminalization (White 1998: 17).

Consistent with this argument, Sharpe (1998) states that although community peacemaking circles reflect principles consistent with VORP and family group conferencing, they take restorative justice and reintegrative shaming theories two steps further.

¹³ Morris (1994) refers to transformative justice in a social context. Moore (1993) also uses the term transformative justice, but it is psychologically-based, with the objective of transforming the affect, or emotions associated with crime and victimization.

Victim-offender mediation emphasizes the reminder that offenders harm people, and that offenders must be accountable to those they have harmed. Family group conferencing recognizes that both victims and offenders need support and reintegration following an offence, and that support people are key components of this endeavour.

Circles, whether healing, sentencing, or peacemaking, reinforce the understanding that

part of the responsibility for dealing with crime lies with the larger community, not just the persons and families directly affected by it. Second, the process of dealing with crime does much more than solve isolated criminal problems. It is also a vehicle for building community (Sharpe 1998: 37).

This quote is particularly relevant to many First Nations communities today, because they are currently dealing with the effects of colonialism and oppression. The transformative approach recognizes that an underlying problem caused the conflict, and the response includes much more than repairing the harm created by a specific incident or helping the victim heal from its effects. In peacemaking circles, harm reparation and offender accountability form part of a larger holistic plan, which is designed to not only address victim issues, but also to support the offender in following a healthier path, which will help to prevent similar occurrences in the future. The intention behind victim, offender and community healing is to transform the imbalances or conditions that provoked criminal behaviour. Many communities use circle processes precisely because the underlying social conditions in their communities are dysfunctional, and lead to crime and conflict. In many cases, restoring what previously existed is not a desirable option.

Circles focus on a much broader range of changes. Circles strive to change relationships by changing the circumstances of offenders, victims, and of their respective “communities”...Circles are not just a different way to process crime. Circles are about community development, about

rebuilding a sense of sharing the responsibility of citizenship. By enabling individuals, families and communities to make decisions about conflict within their lives, circles strengthen connections to families, to communities (Stuart 1997: 14).

In this way, harms resulting from crime are the shared responsibility of the family and the whole community, who “let the offender lose their way and fall into criminal behaviour” (Sharpe 1998: 39). Resolving conflict solely at an interpersonal level will not address the larger conflicts that cause offending behaviour. Because of the three-dimensional nature of restorative justice, the young offender cannot heal and re-integrate into the community without the community’s active support and involvement. Part of the philosophy underlying peacemaking circles is that “the harm of one is the harm of all; the joy of one is the joy of all” (Couch, cited in Stuart 1997); thus, crime and victimization are community issues.

Community-based justice in First Nations communities focuses its efforts on transforming the pain of the past, and strengthening interdependent relationships in the present, toward self-sufficiency for the future. This involves addressing the injustices perpetrated on them by their oppressors, and the social inequalities that plague their current existence. While family group conferencing speaks of empowering and strengthening families, and reintegrating offenders (Maxwell and Morris 1993),

...a close reading of the text will show that what they are empowered to do is not to address the sources of inequality and social vulnerability, but only to participate more effectively in the justice process....they cannot address the wider social issues which reside well outside of the criminal justice system (Polk 1994: 132).

It is highly unlikely that working with youth and their families alone will address the social inequalities that pose barriers to youth and community development. The

notion of communitarianism, whereby individuals are “enmeshed in interdependencies which have special qualities of mutual help and trust” (Braithwaite 1989: 100), is the ideal upon which restorative and reintegrative strategies are built. This insinuates that developmental institutions and experiences are essential elements in engendering interdependency and communitarianism. While youth crime is a symptom of the breakdown in the elements which provide interdependence and foster communitarian ideals, the real problem is the failure of social institutions whose role is to provide integration of youth and families in community life. Polk (1994) argues that it is

essential to address the major questions of unemployment, inadequate schools, institutional racism in its widest context, political structures, health and recreation institutions, given that these are central issues for supporting communitarianism (131).

In essence, the cause of much youth crime has to do with social injustice: the lack of opportunities for work, inadequate housing, health care, recreational options, and poor ties to school. Youth and their families (especially of First Nations background) are powerless to make changes in these areas, and thus, lack the interdependencies essential to integration in society. Thus, the place to begin positive youth development is “with those institutions which are central to establishing conventional and legitimate identities – school, work, politics, recreation, health and family institutions” (Polk 1994: 138).

White (1998) expands on this approach and argues that criminal justice responses to youth crime must be seen as a larger process, which integrates “a holistic, community-building approach” (op cit: 2) with community crime prevention measures.

Crime is not reducible to the individual. It is a social phenomenon. Concentrating solely on the individual offender, or specific incidents of harm, belies the necessity for widespread changes in particular locales. An

important task of crime prevention, and in dealing with young offenders, is to use the opportunity of intervention in order to re-build communities, and to foster the ideas of solidarity and co-operation. Reintegration, to be meaningful, must involve the nesting of the young offender in a web of familiar, pro-social relationships oriented toward community improvements (White 1998: 21).

Bazemore (1999) applies restorative justice principles and assumptions to what he has referred to as a “relational approach to rehabilitation” (155). This approach “links crime to a breakdown in social relationships and hence prescribes a reintegrative response to crime focused on attempts to repair, rebuild and enhance bonds or ties between young offenders and their communities” (Bazemore 1999: 155).

Young people grow up in, live in and belong to their communities; however, if they are not connected and respected, they have the power to destroy the community (Watson 1997). Adults with roles in work, family and community life have self-images of usefulness and belonging, and a public image as a contributing member of society. They do not commit crime because they have a stake in conformity, which ensures they have much to lose if caught engaging in illegal activities. Most youth lack this sense of “connectedness”. They do not hold positions of responsibility in work, community or family groups that allow them to make meaningful contributions; hence, they become marginal commodities, even liabilities, in conventional society. Thus, there appears to be little to lose by engaging in criminal behaviour, because the stake in conventional behaviour is low. Youth who fail are increasingly stigmatized, and their self- and public image is negative, which further weakens their bonds to conventional social groups (Bazemore 1999).

Bazemore (1999) theorizes that the key to thinking about patterns of crime and communities involves the cycle of crime, fear, withdrawal, isolation, weakened community bonds, and more crime. The assumption is that the more connected community members are, the more likely they are to refrain from committing crime. Weakened community bonds, or a lack of community connectedness, is a contributing factor to crime causation; and “as community bonds are weakened, the power of community disapproval as a force for restraining crime is reduced” (Bazemore 1999: 161).

White (1998) argues that youth crime is a reflection and an outcome of social divisions and inequalities characteristic of current socio-economic policy. Various individual, situational, and social causes of youth offending behaviour must be situated and understood within the wider societal contexts and community conditions which shape the overall life opportunities and experiences of young people¹⁴. Labelling and disregarding certain communities and the generation of youth as part of the underclass and criminal culture further stigmatizes and marginalizes, and perpetuates the problems that cause delinquency. Exclusion from the institutions that provide “legitimate” identities forces youth to seek alternative sites where social identity and belonging can be forged; subsequently, youth rebel against those with ownership of public space.

The approach to addressing this self-perpetuating cycle of youth exclusion, marginalization, and crime is to encourage the participation of and provide some

¹⁴ White (1998) argues that “to address issues of youth crime adequately ultimately requires that analyses shift from simple multi-factoral analyses, to consideration of broader social processes which give rise to and exacerbate particular ‘risk factors’” (White 1998: 8).

ownership to young people in developing approaches to youth problems, in partnership with local agencies. The response involves changing perceptions of young people, establishing re-connections between youth and adults, increasing the willingness and capacity of community members to take responsibility for community social issues, challenging dominant ideologies and repressive structure, and reforming social institutions which disadvantage and marginalize young people (White 1998; Bazemore 1999).

If restorative justice is to be truly transformative then it must be connected to genuine community alternatives, based upon open, accountable participation and social inclusion. For young offenders, this means being part of the solution to communal problems, rather than living symbols of social disorder and the pains of inequality (White 1998: 22).

Bazemore (1999) advocates for an approach to rehabilitation that is focused less on treating young offenders than on building communities; less on new treatment programs and more on institutional reform to promote youth development; less on counselling to improve self-image and more on changing the public image of young people in trouble; less on youth justice professionals and more on building connections between young offenders and community members. “Restorative justice responses to crime can attempt to break into the cycle of crime, fear and weakened relationships, and in so doing offer a holistic approach to addressing sanctioning, safety, preventative, peacemaking, and rehabilitative needs” (Bazemore 1999: 162).

A relationship-building focus of restorative justice and approach to reintegration and community building involves three basic components. First, the involvement of all three parties (victims, offenders, and communities) affected by the crime is essential.

Second, the role of government is peripheral to support the primary and informal roles of community members and socializing institutions in the reintegrative response to crime. Third, to support the first two components, communities and institutions must support young people in building competency, and provide them with the capacity and opportunities in the community. On a micro level, this involves enabling young people to develop meaningful relationships with adults to further the objective of gaining community acceptance. On a macro level, “policy and advocacy based on a relational approach would promote institutional change and community engagement to ensure the wide availability of new roles for young people in work, education and civic life that provide such capacities and experiences” (Bazemore 1999: 163).

More specifically, the response lies in community youth development (CYD) (Watson 1997), which embodies the best principles of community development and youth development:

Community development demands that citizens initiate and control activities to positively influence conditions affecting their lives. It calls for citizen participation, cooperation, and collaboration. [Community youth development] takes this principle one step further. It requires that young people be actively engaged in the process by developing their own identity, self-worth, independence, sense of belonging, and connections to family, community, the Earth, and the sacred. It also develops their capacity to engage in life-long learning in order to contribute to family, community, and society, as well as to demonstrate competence in vocational choices (Watson 1997: 197-198).

Conditions of communities must change so young people are presented with opportunities which will enable them to reach their full potential. Involving young people in the community developmental process gives them stake in its well-being and survival. Community youth development is a holistic approach to working with young

people in which the focus is on community building¹⁵. It requires partnerships between youth, other community members, service providers, and others to create services and systems that honour and support communities. Participation is another key element, as it fosters self-esteem among youth, promotes a sense of belonging, usefulness, and power among youth, enables the acquisition of new skills, and provides an opportunity to work for social justice. As a result, young people become more involved in their communities, and the entire community benefits from their energy, creativity, and accomplishments; in the long-term, “training youth as community-minded citizens is an investment in the community’s future” (Watson 1997: 203).

The best approach to even the most serious youth offending begs for a change in the very conditions and dynamics that cause it. Unemployment and marginalization are only symptoms of social-structural problems that pervade entire communities. White (1998) concludes that *restorative social justice* must include broad-based community action on issues related to crime and violence, that involves all young people in social planning and community building. On-going community connections for young offenders are also necessary, as they contribute positively to community life.

¹⁵ CYD is based on the following premises or “best practices”:

- Create a culture in which youth and adults respect each other and share responsibility.
- Create a just and compassionate society in which the focus is on the individual in community, and in which peace, justice and equality are valued and supported.
- Create a space where young people feel and are safe.
- Create a culture of appreciation, in which youth can learn about relationships in a caring context, can celebrate successes, be supported in failures, and can learn about their own and other cultures.
- Transfer practical, usable skills to youth and families to use among themselves and with others.
- Be conscious stewards of relationships who value mentoring, modeling, and an openness to learning.
- Use what happens naturally in relationships as a source of learning for both the youth and [those who live and work with them].
- Create opportunities for youth to find their own path and identity (Watson 1997: 202).

Community Court Peacemaking Circles¹⁶ as a First Step

A number of Canadian judges have recognized “that there has to be a better way to respond to the social and personal disorganization of many Aboriginal societies and that Aboriginal justice systems hold a promise that the criminal justice system has failed to fulfil” (RCAP 1996: 73). They have described the western justice system to be confrontational¹⁷, counterproductive degradation ceremonies¹⁸, whose sole objective is to process offenders¹⁹.

What now makes for exciting times is a recognition by increasing numbers of communities and justice professionals that a predominant reliance upon the state will not diminish crime; remove its underlying causes; build healthy, safe communities; re-establish family values and responsibilities; rebuild the lives of individuals who have fallen into crime; nor restore the lives of victims ravaged by crime. This mutual recognition has spawned a search for new partnerships between justice agencies and communities, and for opportunities for communities to assume responsibility for conflict (Stuart 1996a: 206).

Community court peacemaking circles²⁰ were developed in the early 1990s by interested Yukon communities²¹, in partnership with local judges, as a more culturally

¹⁶ Originally termed “circle sentencing”, the term “peacemaking circles” is used more often in this thesis, to signify the broader objectives of sentencing circles, and to respect the preference of the research community.

¹⁷ Coutu, Jean-Charles (1985). Cited in RCAP (1996: 73).

¹⁸ Stuart, Barry (1997). Quoted in the Ottawa Citizen, February (A1-A2).

¹⁹ Fafard, Claude (1994). “On Being a Northern Judge”, in R. Gosse, James Youngblood Henderson, & Roger Carter (Eds.). *Continuing Poundmaker's and Riel's Quest: Presentations made at a Conference on Aboriginal Peoples and Justice*. Saskatoon: Purich Publishing.

²⁰ Stuart (1997) distinguishes between Community Peacemaking Circles (run by local keepers working with a Justice of the Peace, without Crown or defence counsel), Community Court Peacemaking Circles (run by local keepers working with a judge, with the presence of Crown and defence counsel), Court Sentencing Circles (presided over by a judge, taking place in the courtroom, involving only personal communities) and Talking or Healing Circles (for non-criminal matters). While the principles (and many of the objectives) are the same among all four, this discussion and research focus on the practices and processes of the Community Court Peacemaking Circle, which is the operating model in the research community, and was witnessed by the researcher.

²¹ Although it is recognized that communities in Saskatchewan and Manitoba (along with other provinces) have adopted and adapted circle sentencing, this discussion of sentencing circles is focused on experiences and practices in Yukon communities.

appropriate method of resolving conflict created by crime, in the hopes of restoring, or creating, balance and harmony in the community (Stevens 1994; Royal Commission on Aboriginal Peoples 1996; Stuart 1996a). Circuit courts that flew-in or visited remote communities on a bi-monthly basis to dispense justice presented many problems, including the facts that justice personnel knew very little about the communities, were outsiders, did not speak the local language, and imposed a system of justice that was foreign to community members (RCAP 1996; Lilles 1997). Often held in community centres, potlatch houses, or other public venues, circles encourage community input into sentencing. Based on the reality that community members know the problems of their communities best, circles invite the participation of the offender, the victim, the Community Justice Committee, family, friends, community agency representatives, and other community members to address the underlying causes of crime and provide sentencing consultation to the court (Stuart 1996a; Stuart 1995).

The majority of offenders sentenced in the circle have been adults, but some young offenders have also participated and received community-based dispositions in circles as well (Griffiths and Corrado 1999)²². Youth are seldom processed in the circle, because community court sentencing circles generally accept offenders with more serious crimes and records, and many communities prefer to process young people through more informal or diversionary processes.

²² LaPrairie (1995) reported that more youth were sentenced in the circle than adults, which is inaccurate.

The very first sentencing circle involved the case of R v. Moses²³, a 26-year old member of the Na-cho Ny'ak Dun First Nation, who was born and raised in the Yukon community of Mayo, and charged with taking a baseball bat to a police officer in 1992. With 43 prior convictions, and after having served various jail sentences totalling eight years, it was obvious that the criminal justice system had failed to protect the public, rehabilitate, or deter Mr. Moses from crime. Despite the criminal justice system's ten year investment of over a quarter a million dollars, Mr. Moses's criminal behaviour had worsened over the three years prior to his participation in circle sentencing. The system had failed to address the many complicating issues²⁴ that contributed to Mr. Moses's criminal behaviour. The presiding Yukon Territorial Court Judge adjourned sentencing in the courtroom to permit the community the opportunity to become involved in devising a different approach and potential solutions to help break the cycle of crime and violence of the accused. The circle sentencing resulted in a suspended sentence, and the accused was placed on a two year probation order²⁵.

²³ R. v. Moses (1992) 11 C.R. (4th) 357 (Yukon Territorial Court).

²⁴ Philip Moses was one of nine siblings, and all but one of his four brothers also had lengthy criminal records. Raised in a home environment fraught with alcohol abuse, Philip suffered from health problems related to alcohol abuse. His crimes were also committed either while impaired or to support his addictions. Much of his early life was spent in foster homes, group homes, and juvenile detention centres. He functioned at a Grade 6 level of education, and suffered from various personal problems and dysfunctional coping skills. The need for extensive personal counselling had been noted repeatedly before this incident, none had been provided (R. v. Moses (1992) 11 C.R. (4th) 357 (Yukon Territorial Court)).

²⁵ The conditions included residing on the family trap line 60 kms outside of Mayo with a family member, efforts to facilitate reintegration with the family, a two-month residential alcohol treatment program, a return to his family's alcohol-free home, life and employment skills counselling and continued substance abuse counselling with the First Nation. The plan would be carried out with the support of key family and community members, and relevant justice system personnel (R. v. Moses (1992) 11 C. R. (4th) 357 (Yukon Territorial Court)).

The Criteria for Acceptance into a Peacemaking Circle

Some judges have developed guidelines that outline the criteria for accepting an offender's application to be sentenced in the circle²⁶. Generally, offenders must have pled guilty and accepted responsibility for the offence, be ready and willing to make positive changes in their life toward healing, have some connection to and support from community members, seek support from an Elder, develop a healing plan with the Community Justice Committee or support group, and shown sincerity and a genuine desire to change, by taking steps towards fulfilling it. The victim's input is also important when considering whether a circle is appropriate in specific cases (Stuart 1996a; Stuart 1996b; Bazemore and Griffiths 1997). An offender approaches the Community Justice Committee with the request, and if approved for support, makes a formal application before the court, where the court decides if it is "willing to take a calculated risk and depart from the usual range of sentencing".²⁷

The Peacemaking Circle Process

Some communities have empowered community members to act as "keepers of the circle". They ensure that circle teachings and guidelines²⁸, and the values²⁹, customs,

²⁶ R. v. Alaku (1994) 112 D.L.R. (4th) 732 (Court of Quebec); R. v. Joseyounen, (1995) 6 W.W.R. 438 (Saskatchewan Court of Queen's Bench); R. v. Morin (1995) 101 C.C.C. (3d) 124 (Saskatchewan Court of Appeal), Judgement of Sherstobitoff J.A (in RCAP 1996).

²⁷ (1995) 6 W.W.R. 438 (Sask. Prov. Ct), (in Green 1998).

²⁸ Although guidelines vary by community, they often ask participants to speak from the heart, not interrupt others, respect others' submissions equally, only speak when holding the clockwise-passing feather, and remain until the end of the circle (Stuart 1996a). Participants are asked to leave the circle by walking clockwise around its outside borders, and keep all information confidential (Stuart 1996b). Participants are also given the choice to decline speaking when the feather reaches them.

²⁹ The setting and process of sentencing circles emulates principles of equality, sharing, interconnectivity, inclusivity, and respect (Stuart 1996a).

and concerns of the community are respected. The keeper opens the circle with a prayer, which asks for help from the Creator to guide participants in discovering solutions. Depending on the community, the Prayer is sometimes preceded by a smudge, to ceremoniously cleanse participants of negativity and open their hearts. Everyone is welcomed to the circle, and participants are asked to introduce themselves and share their intentions for participating. The Crown then presents the legal facts of the case, and may make opening submissions and present other relevant facts regarding the offender's criminal history. The offender's support group reports on the offender's progress since the offence, and poses issues for discussion. The victim relates their feelings, concerns, issues, the impact of the offence, and their submissions for the sentencing plan. Victims are encouraged to voice their pain, anger, and other emotions, and seek answers to questions, which enable them to begin healing.

In the second round of open discussion, participants are given the opportunity to voice their concerns, ideas, and support for the offender and/or victim, and share personal healing experiences, or the impact the crime has had on them. Offenders are expected to respond to questions and comments, share their feelings, and devise solutions to repair the harm and reinstate balance in themselves and in their community. Support group members provide guidance and commit themselves to support the offender in the healing plan. The keeper or judge summarizes the discussion throughout all stages of the process. After the final round, the Judge has four options: to impose the agreed-upon sentence; to take a break to provide key participants with the privacy to further contemplate or discuss issues; to adjourn the case to obtain further information or allow parties to consider

options or solidify outside resources; or to impose a decision if the sentence was not agreed upon by all parties. Participants are invited to make concluding comments, and the keeper says a closing prayer (Stuart 1996a; Stuart 1996b).

Post-circle follow-up is equally as important as pre-circle preparation. Offenders are supported in their healing plan endeavours by their support group, and agreements are subject to judicial review. These reviews are based on reports given by the Community Justice Committee³⁰ and support groups. Since the implementation of conditional sentencing in 1996, Yukon judges have often withheld jail sentences, pending successful completion of agreements and plans developed in circle sentences (Bazemore and Griffiths 1997).

The Objectives of Peacemaking Circles

Peacemaking circles incorporate elements of Aboriginal cultural values, concepts of justice, beliefs and spirituality, and are reflective of Aboriginal foundations in a system of communality (Ross 1996; Stuart 1996c). “The circles are reflections of the beliefs in the inter-connectedness of people, and the importance of community well-being. They are composed of members of the community, coming together to make decisions concerning the welfare of the community. Circles focus on the broader context of the individual within the community, not on the individual in particular” (James 1993: 34).

Peacemaking circles reach beyond repairing the harm created by crime, in an effort to build the “social capital” (Stuart 1997) that is so necessary for community-based

³⁰ In the research community, the Community Justice Committee regularly invites offenders to report on their progress at the weekly-scheduled justice committee meetings.

peacemaking processes, which ultimately builds healthy communities. While courts and the criminal justice system focus primarily on responding to offending behaviour (through retribution and confinement), peacemaking circles support offenders in addressing the issues that predispose them to criminal conflict. Often, these same issues are those confronting other members of the community, whether they are manifested through offending behaviour and conflict with the system, or in general dysfunctionality. This approach to conflict through community building is based on the assumption that offenders who change themselves but continue to live in the same environments that have not changed, soon return to old behaviours and old habits of offending (Stuart 1997). Realizing the primary objectives of peacemaking circles facilitates the understanding that the development of communities and the building of “communities of support” are essential elements in transforming the conditions which give rise to criminality and criminalization. A community response to crime and a concerted effort toward addressing its underlying causes prevents future crime, provides a community with the capability to deal with its own conflicts, and ultimately engages a community in its own development.

A limited but valuable amount of research and literature (Stuart 1993; Stuart 1996a; Stuart 1996b; Stuart 1996c; Stuart 1997; Stevens 1994; James 1994; Green 1997; Cayley 1998; Griffiths and Corrado 1999) has identified some of the true objectives of peacemaking circles and documented the observations that lend support to its benefits³¹.

³¹ At times, it is difficult for the reader to separate between objectives and accomplishments, especially in sources where the author is intimately tied to the development and operation of peacemaking circles, and has a vested interest in their survival.

These objectives collectively represent a community response to building safer, more functional communities that have massive potential to address issues associated with criminal behaviour. The overarching objective is that the community becomes stronger in its ability to solve its own problems, and healthier as a whole (Stuart 1997). These objectives and observable results include, but are not limited to (see Stuart 1993; Stuart 1996a; Stuart 1996b; Stuart 1997; Stevens 1994; Cayley 1998; Lilles and Stuart 1992; Warry 1998; Griffiths and Hamilton 1996; Griffiths and Belleau 1993):

- addressing the causes, rather than the symptoms of crime, and fostering innovative and durable solutions;
- crime prevention in individuals and in the community through healing plans and other measures;
- encouraging the involvement and capacities of victims, offenders, families, and community members to forge solutions to crime and conflict;
- reducing the dependence on professionals and “experts” to solve community problems, thereby increasing self-sufficiency;
- building connections, solidarity, and a sense of community by collectively taking responsibility for issues and resolving conflict;
- empowering and assisting victims, offenders and community members in resolving conflicts;
- promoting individual and community values;
- community and cultural revitalization;
- helping offenders reconnect to their families, and positive influences, and receive support in living a life free of crime and substance abuse;
- encouraging offender understanding of the impact of the crime and furthering responsibility for their actions, themselves, their future, and their communities.

Stuart (1996b) emphasizes that the most important objectives of peacemaking circles arise from the process of consensus building. Participants empower themselves in making decisions about and changes in themselves, their family, and their community; they generate respect for differences in culture, experiences, and needs; their participatory skills are enhanced; and they improve communications within the community. These

objectives ultimately help to develop the community for the long term, in reviving traditional values and re-asserting control over their own issues.

Circle sentencing discussions may not always produce immediate resolutions of long-standing conflicts, but can prompt communities to implement or press for solutions to concerns revealed in the circle. By opening the process to probe the underlying causes of crime, and by exploring what is necessary to prevent further criminal activity, community justice systems redress the larger conflict...by developing sentence plans encompassing the needs of both victim and offender, prompting other agencies to become actively engaged, and soliciting the willingness of offenders, victims, and their respective families and friends to become involved in finding solutions to the overriding problems causing tension and conflict (Stuart 1996a: 205).

However, community functionality and cultural revitalization do not happen overnight; the presenting problem then, in a results-oriented society, lies in the attempt to measure the subtler effects of this initiative during the stages of its infancy.

Rome was not built in a day:

The challenges of measuring the impact of a community-based peacemaking circle initiative

In light of the historical experiences of First Nations' peoples with the Canadian criminal justice system and the problems confronting youth justice in Canada, it is important that restorative models of justice (as practiced in First Nations communities especially) are given ample opportunity to prove themselves successful. This requires enabling communities to fully develop their local justice initiatives over a reasonable developmental time frame, and with adequate financial, community, and human resources that facilitate the development of all supporting facets of community peacemaking circles. The criminal justice system has operated with seemingly unlimited resources for the past two centuries, despite a continuation of the crime problem and evidence demonstrating

the ineffectiveness of its operations and approach. The system not only continues to exist with only superficial, operational modifications (as opposed to philosophical change), but it has managed to justify its own expansion (see Christie 1994).

We in the justice system have perfected a diabolical scam. The more the justice system fails to achieve its stated purposes, the more this system will be rewarded with additional funding. Except for the community, no single justice official or agency has an institutional budgetary incentive to reduce crime. As crime increases, the arguments for increased police, courts, corrections, Crowns, Legal Aid, probation and other justice agency budgets become irresistibly compelling.....other agencies must compete for public funds by demonstrating success; we in justice go a long way to securing annual funding increases by relying on our failures (Stuart 1996c: 25).

The current criminal justice system has existed for over 200 years, and the revived and revised model of restorative justice has only begun to flourish over the past decade. However, while the former has not been overly successful in its endeavours, the latter is under immense pressure to prove itself “effective” (Stuart 1993; Stevens 1994; LaPrairie 1998; LaPrairie 1992; Roberts and LaPrairie 1996). In reality, “while there remains a continuing need for more research in [the restorative justice] field, there already exists far more empirical data, based on multi-site assessments in Canada, the U.S. and England than one could find in many other correctional interventions” (Umbreit 1997b: 2). Unfortunately, but understandably, due to program proliferation, “[t]he majority of evaluations of restorative justice processes focus on mediation in the United States, Canada and the United Kingdom, and Family Group Conferencing in New Zealand and Australia” (Schiff 1997: 2).

Some literature has discussed the impacts of community-based justice initiatives in First Nations communities; however, it is largely anecdotal. Green (1998) briefly

discusses the impact of peers and respected community members who support youth in their endeavours to change, and challenge a young person's decision to offend (135-136). Another impact, instigated through community-based circles, was the empowerment of community members, once they began to discuss shared community problems, and move toward community healing (Green 1998). Lilles (1997) explains how the involvement of the Teslin Clan Leaders in the court process, which began in 1991, was part of a larger movement toward community development. Since then, there has been a

...noticeable increase in social services resources, counseling and activities for youth. The size of the court dockets has decreased significantly...trials are rare, as there is a much greater willingness for offenders to accept responsibility in a non-adversarial process which focuses on rehabilitation and not punishment. Guilty pleas are entered early, and in family violence cases, it is not unusual for the offender to have initiated formal counseling and treatment prior to sentencing (Lilles 1997: 140).

Lilles (1997) also noted that only several years before the initiative, the court docket was busy with young offenders whose crimes were related to boredom, and under-age drinking. Through the community court process, these needs were heard and acted upon, and there were no youth on the docket for four court circuits. Similarly, Jonathan Rudin, of the Community Council Program of the Aboriginal Legal Services of Toronto, reported positive outcomes in a recent evaluation of the program. The independent study demonstrated that during the two-year study period, two-thirds of the clients had fulfilled their conditions, and many of the program's clients felt the program helped them to reconnect to their Aboriginal community. Although there was only a modest decline in the number of offences people had committed after having participated in the program

(compared with before), it was recognized that changes in (especially chronic) offenders take time (in Cayley 2000).

There is a paucity of rigorous evaluative research which demonstrates the extent to which purported outcomes of peacemaking circles are achieved (Schiff 1999; Bazemore and Griffiths 1997; Linden and Clairmont 1998; Galaway and Hudson 1996)³². However, it has been noted that circles have clearly stated objectives and have the potential to be critically assessed (Roberts and LaPrairie 1996; Immarigeon 1999). Evaluations of restorative-based initiatives are important in engendering public support for community-based justice and dispelling myths that reinforce perceptions that harsher sanctions are required to combat crime (Lilles 2000)³³. Lilles (2000) stipulates that alternatives to the criminal justice system must be evaluated in comparison to the existing realities of the system, rather than a perfect or ideal system; thus, “the failure of the existing system has to be the standard against which alternatives are evaluated” (Cayley 1998: 214).

According to Roberts and LaPrairie (1996), the benefits of community peacemaking circles include: reduced recidivism, crime prevention, cost reduction, the involvement of victims, and community solidarity. However, literature on research and

³² One recent qualitative study was conducted of a South Saint Paul, Minnesota peacemaking circle program. While the focus of the report was not entirely on evaluation results, the authors compiled information from interviews which asked respondents to identify the most important results or outcomes sought, elements they liked most and least about the process, and their overall measure of satisfaction with the circle and its impact. The most frequently stated important outcome of the circle was the fact that offenders had been held accountable. Participants reported they most appreciated the qualities of connectedness with others in the circle, and victims most valued their freedom to communicate. The most frequently heard negative comment about the circle was that it took too much time. Respondents generally expressed satisfaction with the circle, and a willingness to recommend it to others, for differing reasons (Coates, Umbreit, and Vos 2000).

³³ Lilles (2000). Keynote address for the Provincial Association for Residential and Community Agencies conference, Vancouver BC.

experience demonstrates that these are only a few (and some not even among the most important, or primary) objectives of peacemaking circles, and other complicating factors demonstrate the oversimplification of this statement.

Regarding the objective of reducing recidivism, the Kwanlin Dun Community Justice Project (1995) found “dramatic decreases in the frequency and seriousness of criminal behaviour”³⁴. Although improvements in the overall circumstances of families and communities are as, and in the long run, more critical than improvements in any one offender, this fact is particularly impressive, considering that most offenders who are accepted into and participate in circle processes in the Yukon have long histories of substance abuse, serious, lengthy criminal records, and are often deeply immersed in a dysfunctional life³⁵. The fact that more serious types of cases are normally accepted for peacemaking circles encourages the admission that whatever failures circles may experience, the justice system has had many prior failures with the same individual (Stuart 1996b)³⁶.

Without funding, without support from line justice agencies, community sentencing circles have experienced remarkably few “failures” in their early years of development... Rarely do the critics probe deep enough to discover what even some “failed cases” achieve on many other levels... [not to mention the fact that] [m]ost serious cases had been – many times – through the formal justice process (Stuart 1996c: 28).

³⁴ The authors of the Kwanlin Dun Community Justice Project (1995) noted that, among offenders who had committed an average of almost twenty criminal offences throughout their lives, their rate of serious offences after being involved in the circle dropped 80 per cent in comparison to the same period before and after the circle (self-evaluation of the Kwanlin Dun Community Justice Project, in Cayley 1998).

³⁵ The nine youths referred to the Kwanlin Dun Community Justice Project during 1992-1995 (and accepted to participate in the peacemaking circles process) had a total of 206 prior (officially recorded) offences (Griffiths and Corrado 1999).

³⁶ First Nations community members have the opinion that high risk offenders are the most obvious people to benefit from the circle, precisely because the criminal justice system has failed with these individuals in the past (Stevens 1994).

Concentrating on the impact of circles on the offender ignores the potential impact that circles have on communities, or the impact that the community has on the offender. Both ultimately impact offending behaviour. Despite the fact that community justice projects reduce rates of re-offending, “it would be a tragic oversight to rely exclusively on recidivism rates to compare the success of community-based justice programs with professional justice programs” (Stuart 1997: 13). Because of the distinct and holistic objectives of peacemaking circles, Stuart (1996b) elaborates on the argument that principal value of peacemaking circles cannot be measured by what happens to offenders, but rather by what happens to communities:

The impact of community-based initiatives on victims, upon restoring relationships injured by crime, upon the self-esteem of others working in the Circle, on strengthening families, on building connections within the community, on enforcing community values, on mobilizing community action to reduce factors causing crime, to prevent crime – and ultimately to make the community safer – while not readily visible, these impacts are, in the long run, significantly more important than the immediate impact on offenders (293-294).

Thus, in building community, and a sense of community, peacemaking circles improve the capacity of communities to heal their own members, solve their own conflicts, and ultimately, to prevent crime. The practice of tracking recidivism rates alone denies the requirements of applying long-term concerted efforts and addressing deep-seated issues to change destructive behaviours for the long-term. Generations of abuse, masked with alcoholism and sustained through crime cannot be solved overnight, or in one peacemaking circle. Improvements in the social environment, in perceptions and coping abilities must accompany efforts to change.

The second objective which Roberts and LaPrairie (1996) note is measurable is that of crime prevention. This objective can be broken down into various facets which are less conducive to statistical measurement, as explained by Judge Barry Stuart:

By improving and relying upon informal social controls within communities, circle processes can significantly contribute to preventing crime by: strengthening the ability of individuals and families to assume greater responsibility; reconnecting people in trouble to positive environments within their families and communities; rebuilding a sense of community; redressing the underlying causes of crime; and healing broken people and broken relationships (Stuart 1997: 13).

Suddenly, measuring the impact of the objective of crime prevention (as it is intended in peacemaking circles) is slightly more complex and elusive. The overarching objective of crime prevention is signified by qualitative measures of success that may only be documented with time, and at this point, with anecdotal evidence. Because of ever-changing community, social, economic, and other dynamics, it would be difficult to prove that a reduction in the crime rate would be entirely and exclusively attributable to a certain response to crime, particularly if the objectives are most accurately qualified.

While cost reduction is definitely not a primary objective of peacemaking circles, it is a by-product. "Indirectly through reductions in unnecessary costs, through replacing and enhancing justice services with community resources, through avoiding many unnecessary trials and court appearances, and by re-allocating expenditures in a purposeful manner, sentencing circles can profoundly induce a more effective public investment in preventing crime and in healing victims, communities, and offenders (Stuart 1993). Through the use of volunteers who sit on Community Justice Committees and demonstrate genuine interest in helping to build their communities, the need for paid

professionals is also reduced. And because community members recognize that offenders must someday return to the community, and people return from jail more bitter, less connected to their communities and more inclined to dysfunctional behaviour (Lilles in Green 1997), they rarely impose a jail term on offenders, thus avoiding the expensive costs of incarceration (Stuart 1997; Stevens 1994). The most important method of reducing costs, however, will actually occur in the future, once communities increase their capacity to assume greater responsibility for their own problems (Stuart 1993).

The most significant savings occur beyond the reach of what is traditionally accounted within the justice system as costs and benefits. The intangible benefits of empowering people with the skills to build consensus, to participate effectively, positively in the decision making processes within families, communities...cannot be easily measured (Stuart 1996c: 26).

There are numerous objectives and benefits of peacemaking circles, but the first three, as stated by Roberts and LaPrairie (1996) do not accredit circles for the more difficult objectives they focus on accomplishing. While peacemaking circles have enjoyed many successes, what is more meaningful is the quest toward establishing capable communities and a regenerated culture. Peacemaking circles are generally still in their infancy (Green 1997) and the community-building potential of circles will not be principally evident for several years, even generations (Stuart 1996a), as communities work on healing the conflict and trauma caused by colonialism.

In approaching community-based justice processes, lay people want to know if there is widespread community support, if the community is gaining a sense of hope by being empowered to address its own problems, if the community process is fair, balanced and respectful of all participants, and if community and family well-being is promoted...[In essence], it is the work of rebuilding communities (Stuart 1997: 12-13).

The objective of community building can be measured in three levels of manifestations: the individual level, the community level, and the system level. On the individual level, participant perceptions of the circle process and their successful outcomes are important indicators. Success is not measured by the mere absence of criminal activity, but rather as increased capacities for young offenders to develop positive relationships with conventional adults, increased competencies, improved self- and public image, reduced interpersonal conflict, new roles for youth in the community, and increased bonding and community integration (Bazemore 1999; Stuart 1997).

On the community level, community functionality, public confidence, taking responsibility for community problems, and community member involvement in and support of community-based justice can be used as indicators of progress, and community healing. The objectives of relational rehabilitation (with relationship building as the primary ingredient) function to serve the larger objective of community building. The approach necessitates that adults and youth work together to ensure that citizens and community groups begin to take responsibility for reintegration and integration. The professional role in relational rehabilitation would be more of a “catalyst for building connections between young people and adults and adult institutions and facilitating change in the role of offenders from liability to resource” (Bazemore 1999).

On the system level, increased self-sufficiency, equal partnerships with the criminal justice system (or reduced need of the system altogether), increased support for the community taking responsibility for problems and solutions, and sustainable initiatives are important indicators of success. These three levels affect the community

building objective directly and can be used as measures of its accomplishments or success.

Circle sentencing and all parts of a community-based justice system are not just short term solutions – but investments in the community’s future (Stuart 1993).

While the criminal justice objectives of protection of the public through deterrence, punishment, and incarceration³⁷ are inconsistent with the objectives of peacemaking circles (Stevens 1994)³⁸, the overall objectives of crime prevention and protection of the public are shared by the system and First Nations communities³⁹. However, communities must be given the opportunity to solve their own problems, through their own methods, and evaluate their results according to how they attempt to accomplish them⁴⁰. As community justice is about community development, the holistic approach and multifaceted objectives of many restorative justice-based initiatives require a broader evaluative framework than has been used to assess the effects of traditional (i.e., system-centred) crime control initiatives (Griffiths and Corrado 1999). In understanding and measuring the success of the objectives of restorative measures,

³⁷ Although, it can be easily argued that penal sanctions have miserably failed as deterrents (Fattah 1998; Elikann 1999), especially for young offenders (Walgrave 1999).

³⁸ First Nations communities have known, for a long time, that jail does little to rehabilitate or heal the offender, protect their communities, and address the issues causing crime (op cit).

³⁹ Judge Fafard (in Green 1998: 136) notes that “the aim of peacemaking circles is the same as when the disposition is arrived at by other means: the protection of society by curtailing the commission of the crime by this offender and others”. This is accomplished by addressing underlying issues causing crime.

⁴⁰ Although there is much pressure to evaluate peacemaking circles according to system principles, interests, and needs, LaPrairie (1994) recognizes that “a discussion of the ‘effectiveness’ or ‘success’ of a project or program depends upon one’s definition of these terms. Definitions of what constitutes success for these new approaches will vary across a range of competing interests, some community, some individual, some judicial” (21). While Roberts and LaPrairie (1996) state that they believe it is the government’s responsibility to evaluate community justice projects, to ensure they conform to “national standards” (79), LaPrairie (1994) also states that “the only way” to judge whether projects represent an improvement over the criminal justice system is to measure “whether these initiatives meet their stated or unstated objectives...” and “...to assess if meeting those objectives is an actual improvement over the mainstream justice response” (22).

researchers must bear in mind that a different philosophy of justice requires interpreting its meaning through an entirely different lens (Zehr 1990)⁴¹. This involves focusing on the shared stories and previously undocumented anecdotes of the very people who are involved in and have experienced community justice.

Issues affecting the development, proliferation, and success of community-based justice initiatives

If you have a baby, and it's 6 years old, what capabilities does that six year old have? Do you expect that six year old to go out and solve all the problems of the world? Do you expect him to be fully capable of doing whatever task may be appointed to him? I don't think so. Six years old? Let's go easy on this new baby, and try and nurture it so maybe it can mature in maybe, a lifetime. Let's try to keep in mind, it's a baby, it's just starting. That's a very important thing. We've lived under a justice system for a hundred years, and it hasn't served us well. And that's a 500 year old justice system in Canada that hasn't served community people or First Nations people well at all. Now we're coming up with something that people are dedicated to, and truly believe can make a good difference, but again, it's a baby; in this community, it's even younger than in other communities. So, I'd encourage people to try and think about it like that, instead of thinking, we've been doing this for six years, we should have all the answers (Prospect Community Justice Committee member 1998).

Developing beings (and innovative community justice initiatives) experience growing pains. Proponents of peacemaking circles will be the first to admit that this alternative process is not a panacea, and it is not without its own challenges (Green 1998; Stuart 1997; Stevens 1994). Before evaluations can be attempted to assess the impact of community justice initiatives, the issues confronting specific circle initiatives must be identified and addressed. Very little research discusses the components of a "successful"

⁴¹ Criminal justice-based objections to restorative justice (and accusations that it practices "soft justice") could be seen as mere reflections of the current obsession with punishment and the persistent demands for a get tough approach to offenders (Fattah 1998: 395).

circle (beyond the criteria for acceptance outlined above); however, discussions of impediments to a community-based justice program's success are slightly more common.

The South Island Tribal Council initiative on Vancouver Island (BC) is a documented example of the effect that inadequate planning and implementation can have on the life and success of a program. The program ended prematurely after two years of operation because: community consultation was insufficient; many of the key program organizers lacked credibility in the communities; the program did not address specific community needs or heterogeneous cultural values; and political unrest in the communities infiltrated the program (Linden and Clairmont 1998; Griffiths and Hamilton 1996).

LaPrairie (1998) notes that some program evaluations from the Nunavik region of Quebec and Povungnituk (QC) identified several issues that are intimately tied to program implementation: a lack of community understanding of initiatives; a failure to incorporate victims in the justice process; a reluctance of victims and other participants to speak; domination of discussion by certain high profile individuals during circles; focus of discussion on the accused; little preparatory work before the circle; a lack of clarity regarding the representativeness of community members in the circle; and a lack of resources to deal with young people.

Evaluations of the Sandy Lake (ON), Attawapiskat (ON)⁴², and Indian Brook (NS) adult diversion programs reported high satisfaction, healing, and reintegration

⁴² Obonsawin-Irwin Consulting Inc. (1992). An Evaluation of the Sandy Lake First Nation Justice Pilot Project. Ottawa: Department of Justice; and Obonsawin-Irwin Consulting Inc. An Evaluation of the Attawapiskat First Nation Justice Pilot Project. Ottawa: Department of Justice.

among offenders; however, some victims voiced the perception that dispositions were too lenient. Although anecdotal evidence provided support for success stories, issues affecting perceptions, support, and the success of the programs include band politics, conflict over the decisions and role of Elders, a lack of training for Elders as council members, and questions surrounding the effectiveness and fairness of dispositions. Of particular importance was the fact that community members were involved in too little outreach and consultation, and thus, lacked involvement (Clairmont 1996).

While these are a few examples of the limited research available, the following summarizes some of the issues discussed in the literature, that were largely not explicitly based in specific community contexts. These issues are stated as needs, and when lacking, as deficiencies of a particular initiative (or “lessons learned”), which can affect a community-based program’s support, credibility, and sustainability⁴³:

- ***Balanced partnerships with, and support from the criminal justice system:*** A lack of financial, legislative, and ideological support from the criminal justice system can undermine community-based efforts (Green 1998; Linden and Clairmont 1998). Governments may turn responsibility over justice to community-based justice programs for financial reasons, and if the community is not financially equipped or ready to support the program, it will fail. Due to the small size of many Aboriginal communities, financial resources are scarce. The lack of resources from within communities can also create funding dependency, whereby community needs may be compromised to meet the demands of outside funders. Networks and communication with system personnel help to engender support from the system, and concerted efforts to improve the quality of justice can soften perceptions of threatened turf. Conversely, over-involvement of the state in community-based justice can serve to enhance governmental control, and effect very little positive change in social conditions or structures (Depew 1994).

⁴³ These points were compiled from the following sources: Church Council on Justice and Corrections (1996); Warhaft (1998); Stuart (1997); Green (1998); Linden and Clairmont (1998); Depew (1994); LaPrairie (1998); Roberts and LaPrairie (1996); LaPrairie (1992); Sharpe (1998); Griffiths (1996); Griffiths and Belleau (1993); Griffiths and Hamilton (1996); Ross (1993); Ross (1996); Stevens (1994).

- ***Healthy and trained Community Justice Committee members, support people, healers, and circle keepers:*** Training serves the obvious purpose of preparing people to take on the task of helping others, enhances community awareness, generates new networks, and encourages community involvement. Communities must define their thresholds and assess their skill levels for dealing with certain types of cases (Griffiths and Hamilton 1996). Ross (1996) discusses at length the importance of healthy leaders, healers, and community justice workers and its direct effect on the legitimacy, credibility, and success of the program, and its significance in the process of community revitalization (Griffiths and Hamilton 1996).
- ***Pre-implementation planning, community consultation, and assessment:*** Each community faces unique challenges, obstacles, and opportunities. Community members must work together to decide what needs to be addressed, preferred approaches, and discover what resources exist and can be tapped. A gradual developmental and implementation process is important in encouraging community input and discussion on alternatives (Ross 1993). Informational meetings about conflict resolution, mediation, peacemaking, and other consensus-based processes and options are also helpful. Consultation meetings to “solicit the views and concerns of average community members” (Griffiths and Hamilton 1996: 189) serve the purpose of engendering support, participation, involvement, and ownership (Stuart 1997).
- ***Participation, involvement, and support of a wide cross-section of community members:*** The success of community-based justice is directly related to the diversity and strength of community support. Widespread community support and involvement facilitates the development of a stronger community, increases the legitimacy of the program, provides access to varied ideas and resources, and furthers the longevity of a program (Linden and Clairmont 1998; Weafer 1986).
- ***Power imbalances within communities:*** “Community justice must be safeguarded against rivalries and prejudices that beset community life” (Cayley 1998: 189). Circles (or the acceptance of certain individuals in circles) must not be dominated by “powerful local voices” in cases involving vulnerable victims, such as women and children (Griffiths 1996; Griffiths and Belleau 1993; Griffiths and Hamilton 1996), or be used as a tool for the locally powerful elite (LaPrairie 1993). The assumption that First Nations communities are homogeneous, communitarian, structurally equal, and adhere a set of values based on consensus is also inaccurate, and problematic (Depew 1994; LaPrairie in Cayley 2000). Depew (1994) argues that community-based justice initiatives can be overly professionalized, hierarchical, and bureaucratic. The perception of political or practical inequities in circle processes comes at the cost of legitimacy, widespread public participation and community support, and ultimately, of program success (Linden and Clairmont 1998; Ross 1993). LaPrairie (1993) argues that community-based justice must address the larger, structural inequities that pervade communities, if it proclaims to resolve conflicts and address the causes of crime and disorder, which inevitably stem from inequality.

- ***Pre-circle preparation:*** This helps to empower victims and prepare them for meeting with the offender, enables the offender to take responsibility for his/her actions by beginning a healing plan, engenders support from other community members, raises the comfort levels of participants, and improves the quality of information obtained prior to the hearing. If preparation is not done, the principal objectives of a circle will likely not be met (Stuart 1997).
- ***Post-circle follow-up:*** An excellent plan, carefully constructed through pre-circle preparation and further developed in the circle, can self-destruct if not adequately attended to in the community. This involves the support of people and other community-based resources, to monitor and implement the plan. If necessary community resources do not exist to facilitate healing, dispositions or plans resulting from circles may be (or be perceived as) meaningless. Offenders who breach their plan can reduce public confidence in community justice, discourage volunteers from continuing, threaten future government funding, jeopardize opportunities for others to benefit from community justice, and inhibit the accomplishment of wider community-building objectives (Stuart 1997).

What becomes clear (however implicit) in some evaluations and research is the effect that certain implementation issues and multi-levelled dynamics have on the success of community-based programs. What is less clear is exactly how these issues affect processes and outcomes of peacemaking circles.

With the exception of a few publications (e.g., Clairmont 1996; Stevens 1994; LaPrairie 1992)⁴⁴, discussions about issues are removed from the specific community context and dynamics, and presented in relative isolation. A cursory understanding of the specific community in which an initiative is developed, its dynamics, and the history

⁴⁴ LaPrairie (1992) conducted a relatively detailed study of Yukon communities, crime data, and Aboriginal justice. Many, although by no means all, of her descriptions regarding community dynamics and issues are confirmed in this research; and many of her voiced concerns about community-based justice are not consistent with the findings of this thesis research. Although LaPrairie (1992) recognizes that “many differences in communities must be recognized and accommodated in developing justice approaches” (26) in Section IV.1, she fails to distinguish between the thirteen communities in discussions of their particular crime- and conflict-related issues (e.g., variations in economic or social well-being, degree of alcohol/drug use, dependence on external justice services, criminal conflict among young people, availability of human and other resources, power imbalances, role of women, retention of traditional language, etc). In addition, most of her respondents were community leaders.

through which a community's people are shaped, are critical to gaining insight into why and how it operates, and the issues with which it is confronted (Yukon Territorial Court Judge 1998; Depew 1994).

Research from the Yukon has largely been conducted by (and from the perspective of) criminal justice system personnel and government officials. For the most part, Yukon literature, although lacking, is very polarized. Either it is highly descriptive and supportive of circle processes (see Stuart 1997; James 1993; Stevens 1994), or highly critical (from a governmental standpoint) about the paucity of evaluative research, and skeptical about the potential of community-based processes to meet stated or criminal justice system objectives (see LaPrairie 1994, 1998).

Academic literature on community-based justice in general is often either strictly theoretical (Depew 1994) or over-reliant on information shared by professionals and community leaders (or "key informants"), which may serve to either mask the real problems, or further marginalize less powerful voices (see LaPrairie 1993, 1992). Many researchers (with important exceptions, for example, Ross 1996; Stuart 1997) rarely seek an in-depth understanding of community dynamics, realize the efforts of community members and their perceptions of the challenges, or hear the opinions of "average" community members. The voices of (especially First Nations) young people, victims, and community members, the real stakeholders in community-based justice, need to be heard. The perceptions of youth offenders who have experienced peacemaking circles in particular are also overwhelmingly absent from the literature. The focus on young people in this thesis research is grounded in the belief that young people are the future, and

potential solutions, as opposed to the problem, or the main perpetrators of criminal conflict.

The issues presented in research (on selected communities across Canada) rarely relate the multi-levelled challenges to successful community-based justice processes. Critical to the success of community-based justice is the understanding and incorporation of the principle of wholeness (among others), as stated in a document entitled *Twelve Principles of Indian Philosophy* (in Ross 1993). This principle must also be applied to an outsider's understanding of community-based justice, and the interconnectivity of various levels of challenges:

WHOLENESS. All things are interrelated. Everything in the universe is part of a single whole. Everything is connected to everything else. It is only possible to understand something if we understand how it is connected to everything else (cited in Ross 1993: 25).

In light of some of the shortcomings of previous research, the following Chapters will thus provide an analysis of some of the challenges facing one particular peacemaking circle initiative in the Yukon Territory, in its community context, and in the opinions of a wide variety of informants, which are manifested in interconnected individual level, community level, and system level dynamics. In recognition of the principle of wholeness, an effort has been made to approach this analysis from a "systems" approach, rather than a reductionist one (Ross 1996).

CHAPTER FOUR: METHODOLOGY, ETHICS, AND THE SENSITIVITIES OF FIELD RESEARCH

Methodology is not about data collection methods in themselves, but is about the whole process of enquiry (Harvey 1990: 208).

This thesis research was conducted using the ethnographic method (Jary and Jary 1991). Hence, the main methods of data gathering involved participant observation and extensive fieldwork, where the researcher lived near to and within the participating community, at different stages of the research¹. The researcher recorded data in the form of field notes, observed daily life and peacemaking circle processes, collected relevant court transcripts, compiled circle-related literature, and conducted in-depth semi-structured interviews and focus groups. The less formal methods of gathering data through conversation, observation, and participation afforded the researcher with the invaluable opportunity to understand dynamics and processes at a much deeper level.

Jary and Jary (1991) list three characteristics and potential drawbacks of the participant-observation approach, which may or may not affect the limitations of the research, and that will be addressed in the following discussion: the time commitment required; the difficulty of minimizing the researcher's influence on the processes observed; and ethical and methodological dilemmas of entering and leaving the field. Other complications and challenges will also be discussed.

¹ For the first four months, the researcher lived in Whitehorse (within commutable distance to the participating community). During this time, it became apparent that this was potentially problematic when attempting to establish trust with community members for the purpose of obtaining interviews, and sharing candid conversations.

The Sample

The researcher wanted to conduct research in a specific Canadian community (preferably First Nations), which had developed and implemented a restorative justice-based initiative. The literature and information shared by experts in the field had revealed that many of the most authentic and well-established initiatives had been developed in First Nations communities in Saskatchewan, Manitoba, and the Yukon Territory. Due to a desire to conduct research in the north, a Yukon Territorial Court Judge was contacted, who was involved with the communities in the development of their initiatives, and well respected by many First Nations peoples. He reviewed the research proposal, and recommended a few communities that might be interested. The researcher had very little knowledge of the communities; however, it was decided to pursue consultations and preparations to conduct research in one community which had been developing and practicing peacemaking circles for almost a decade. It is this community to which access was granted, and in which the field research was conducted². It was recognized later, when the research had progressed, that the chosen community was characterized by intricate dynamics. The community taught the researcher many valuable lessons, and provided much in the way of thought and discussion (see Chapters Four to Six).

The Judge implicitly agreed to be the researcher's "gatekeeper", and provided invaluable help, support, and advice throughout the research process. The researcher was introduced to key people and he aided in the challenging process of getting started. The

² It is important to note that this thesis research represents knowledge accumulated from the community's participants during the months of April-August (inclusive), 1998. Any changes or progress in the community since then have not been incorporated.

sampling method was varied at all stages of the field research. Key individuals involved in community justice as participants, stakeholders, practitioners, and partners represented the theoretical sample (Strauss and Corbin 1990), which was cumulative, and increased the depth of focus. Because the researcher did not know any community members other than those introduced by the gatekeeper as “key”, sampling began semi-open (limited to specific community members or restorative justice practitioners) (op cit). Fortuitously, other people (of whom the researcher had not known or had never thought to interview) emerged; many of these interviews imparted valuable insight, and others became more peripheral to the research. During the process of the study, the researcher was encouraged by the gatekeeper to interview strong proponents of circle sentencing (to support a theoretical viewpoint)³; this led the researcher to use relational and variational sampling (op cit), to purposely pursue other interviewees. The researcher was less systematic in her choices of these respondents. Often these people were those the researcher was fortunate to get to know and gain their trust. Nearing the end of the field study, discriminate sampling (op cit) dictated with whom the researcher needed to speak, based on the amount of time remaining, how much had already been done, which topics needed further exploration, and who was key to the study who still had not been interviewed⁴.

³ This method of sampling proved to be challenging. Many of these people were extremely busy (because of their involvement in the development of circle sentencing), and some were unable to commit the time. The researcher quickly discovered that more random sampling would bring about more varied viewpoints on sentencing circles and paint a much broader picture of their limitations. It was important to remain open to the many opinions on the initiative, as all community members' views were valid. It would be antithetical to the principles of community justice if only its supporters were consulted for input. Certain community members' lack of knowledge on the subject was telling in itself (and indicated a need for broader consultation, with regards to not only the research, but to the development of community justice as well).

⁴ The seemingly arbitrary deadline of 5 months of fieldwork was largely dictated by funding.

Approximately 55 in-depth personal interviews were conducted with youth offenders and victims who had experienced the circle process, community members (adults and youth), justice personnel, Community Justice Committee members, Elders, RCMP officers, and members of the First Nation leadership and administration. In essence, representatives from groups of participants, developers, and partners of the initiative were consulted for input. Interview questions varied per respondent, based on the differences in each individual's experience and expertise (see Appendix A). Specific semi-structured interview questions sought in-depth information from offenders, victims, and members of the community, regarding their perceptions of the circle process and how well it addresses underlying issues, provides healing and closure, repairs harms, restores community balance, and meets other community building objectives. This enquiry naturally led to the sharing of personal and professional opinions of peacemaking circles and the challenges confronting community-based justice. The direction in which many interviews were led by participants unavoidably became more important topics of enquiry.

Five focus groups were conducted in the community to serve the indispensable purpose of focusing the topic, gathering information on the community itself, its culture, and history; perceptions regarding youth crime in the community; issues faced by youth in conflict; suggestions regarding the limits of the formal justice system in responding to youth crime, and the perceptions and potential (and limitations) of restorative-based justice circles (see Appendix B).

Sensitivities Inherent in the Method

Although participant observation is “a strategy that facilitates data collection in the field” (Wolcott 1995: 88), the method is not without sensitivities. Gaining entry and maintaining rapport, trust, reciprocity, and a tolerance for ambiguity (op cit), understanding and respecting a community’s culture and values, ensuring relevancy of the research to the community, maintaining strict ethics, and recognizing personal biases are elements that, if understood, have the propensity to be of unlimited value to the participant observer.

Because of the close-knit nature of the community, it was practically impossible to secure accommodation within the community, until relations with community members had been established and trust developed⁵. Thus, the researcher spent considerable time and effort attempting immersion in community life by participating in and volunteering for community events and Community Justice Committee activities. It is important to note that this community, like many northern communities with considerable First Nations populations, was very skeptical of outsiders. An initial sense of apprehension and lack of trust among community members was perceived by the researcher.

The researcher spent the first two months simply gaining visual exposure in the community, by being informally present in the community, and in attendance at

⁵ Vacancies did not exist in this community, especially for outsiders. Housing was difficult enough for First Nation members, as most housing was primarily owned/funded by the First Nation. It also felt instinctively intrusive to suddenly co-exist with community members who had lived amongst themselves for generations, especially without knowing any community member well enough to gain semi-insider status. It was not until the last month in the field that the researcher was fortunate to have the opportunity to house-sit for an Elder. Living arrangements prior to this made access to community members especially difficult.

community events, which included a funeral potlatch, an RCMP bike rally for children, Community Justice Committee meetings, a couple of peacemaking circles, the Yukon Commissioner's Potlatch, and Canada Day celebration. The latter event was pivotal to permeating existing barriers and achieving a deeper level of acceptance by a few community members, where contact between the researcher and youth and adult community members became more friendly and informal. The researcher was introduced to others who later participated in the interview process and expanded the snowball sample. This community event helped the researcher to understand and be more sensitive to the fine line between assertiveness and intrusiveness in interviewing community members who were otherwise unattainable, unseen, or noncommittal to meeting with a foreign researcher and outsider⁶.

Other superficial yet complicating factors included the relatively young age of the researcher⁷, her gender⁸, and the fact that she is of non-First Nations ancestry⁹. With time, these initial, superficial impressions appeared to be dispelled as one key community member, and one of the youth (both very important participants and teachers, who were

⁶ The researcher felt it inappropriate to ask questions relating to the research at community events, which was avoided as much as possible; however, at times, she felt it necessary to at least introduce herself, because she knew that she would not otherwise have the opportunity to speak with certain individuals again. The location and timing of interviews had to be sensitive to the privacy needs and desires of participants.

⁷ The youth (or appearance thereof) of the researcher may have inhibited her credibility among community members, community justice practitioners, or other justice professionals; however, it did enable her to gain a relatively positive response from the younger community members, whose points of view were invaluable and integral to the research.

⁸ It is perceived by the researcher that her relative inexperience with field research, and her gender could have been complicating factors in enabling her to receive the attention of a particular focus group.

⁹ This challenge was perhaps more of a factor than the researcher realized, and implicit in interactions; it was explicitly manifested when she was refused an interview with a First Nations Co-ordinator of a nearby community's tribal justice initiative during a visit with the circuit court. Conversely, it is believed that perhaps other participants assumed the researcher was of First Nations ancestry, which worked in her favour. During an interview, it was once voiced by a young participant that the researcher knew what it was "like to be First Nation". The researcher then clarified her ancestry, and was given a first hand explanation.

both originally very skeptical) expressed their realization of the good intentions of the researcher.

In the opinion of some, the time the researcher spent in the north was still too brief. The researcher was told that it would take two years to grasp even a cursory understanding of community dynamics and the social, cultural, and historical implications of community justice. Undoubtedly, this is a limitation of the research, which was mainly dictated by time, a lack of funding, and the smaller scope of the intended project (for an M.A. thesis). Had the researcher spent any less time, many important interviews, obtained in the last month (already surpassing the originally allotted time-frame), presumably because certain individuals felt more secure in their trust, never would have been possible. Perhaps the most poignant expression of the importance of “getting to know” community members and revealing the personal self (which facilitates trust) was shared by a teenage boy, approximately four months into the field. He expressed how his opinion of the researcher had positively changed once he had the opportunity to spend time with her. Had the researcher stayed in the community for only a few weeks, this first impression would have been sustained.

There is no doubt that first impressions are lasting ones, especially when conducting research in such a sensitive environment. During the consultative phase of

the research project¹⁰, it was imperative to meet and begin to establish trust and good relations with one key community and Community Justice Committee member in particular, who had played a large role in instigating and developing community-based justice. Particular effort was made to meet with him first, and make it clear that his approval was being sought, before venturing any further with the development of the project.

The credibility of the researcher was contingent on how she presented herself and the interpretations of her intentions by community members. The western emphasis on and value of formal education is perhaps not shared by northerners, nor understandably, by First Nations peoples whose perception of personal development comes from within, and is based on a lifetime of holistic experiences which further development toward a healthy balance of the physical, mental, spiritual, and emotional aspects of the self¹¹. It was often difficult to present the project to community members without wrongfully assuming their perceptions of its value, ask for their participation, and secure their interest and involvement in the process. Toward this quest, the researcher had to ensure that the research purpose remained consistent with community needs, which translated

¹⁰ A brief consultative visit was made to the community two months prior to intended arrival. The visit followed preparation through written and oral discussions with a primary gatekeeper, who was well respected in the community, an application for a "Scientists and Explorer's License" (see Appendix C) through the Yukon Territory's Ministry of Tourism, a letter (about the proposed research) and a letter and preliminary phone call to request permission from two key community members to make the consultative visit. During the brief consultative visit, the researcher learned that many of the dogs were not cared for, and homeless. The researcher wondered why this candid revelation was made. It began her enquiry to learn more about the community, and the challenges it faced (see Ross 1996: 49).

¹¹ This is definitely another topic of discussion altogether. The researcher was unaware of the impact that this field research experience would have on her personal development, which was, at times, overwhelming. Despite the many challenges presented in the research process, she would never trade these learning experiences about herself and others for the simpler and less dynamic process of library research.

into the requirement of being flexible. Of primary importance was that the research was relevant and useful to the community.

Applied research must... respond to local needs, and must be put to use to improve people's lives (Warry 1998: 247).

The necessary challenge of having "a tolerance for ambiguity" (Wolcott 1990) presented itself during the beginning stages of the research, and throughout, until completion. The researcher was continually modifying her approach, and broadening the focus, in an attempt to accommodate the unpredictable nature of "reality". Before any discussions with the community took place, the researcher originally wanted to aid the community in its own evaluation (as the evaluation of restorative justice initiatives was repeatedly expressed as a need in academic literature). However, this approach would have doomed the research to failure before it was begun, had this topic been proposed.

First Nations peoples have already been "researched to death" (Warry 1998: 246), and exposed to unethical and disrespectful research practices by non-First Nations academics in the past. This research was intent on not perpetuating the colonialist practice of telling First Nations peoples what they "need", or of assuming that an outsider could evaluate what they had worked so hard to develop, for their own intents and purposes. A *narrow, evaluative* focus would have threatened to undermine the holistic potential of circle sentencing, and ignored the community-building potential of community justice. This consideration revealed itself time and again during interviews, and the focus of analysis broadened to include community and system level dynamics that affected the potential of community justice.

The researcher had assumed that the benefit of the research included the potential that the community would be interested in modifying their community justice practices according to concerns and input, as expressed by community members, that would eventually appear in the final product. It became apparent with further experience that a more attractive perceived benefit of the research to the Community Justice Committee was that documentation of this community's initiative would serve to further raise their profile on the national and international scene, which would ultimately solicit widespread recognition and legitimacy from governments and the criminal justice system, as well as financial support from potential funding sources.

Ethics and the Principle of Respect

The lesson for critical ethnographers is profound, but not complicated: we let the data speak to us, we do not prejudge or impose our own preferred meanings, and we make sure that we do not say *is* when we mean *ought* (Thomas 1993: 22).

During the course of the fieldwork, it was realized first-hand that ethics are intimately tied to respect. This refers to respect for the participants, and for the topic at hand, by reporting what was told. Consistent with the underlying principles of peacemaking circles and a fundamental value of many First Nations cultures, it would have been antithetical to the research if it had been conducted unethically in any way.

The project received ethical approval from the SFU Research Ethics Review Committee, and based its ethical principles on guidelines outlined by the *Association of Canadian Universities for Northern Studies* (1982). It was promised, and every effort was made, to respect the privacy and dignity of the people, value the knowledge and

experience of the people and report their views without distortion, and respect the language, culture, traditions, and standards of the community. The intention of the study was not to pry into the lives of community members and circle participants, but rather to provide a safe forum for their voices and an undistorted rendition of their perceptions of and satisfaction with the circle process. The research was fully explained to all participants, and any refusal to participate was unquestionably respected. The researcher requested the input and sought the approval of the Community Justice Committee regarding the appropriateness of questions to be asked of participants. The informed consent of each individual participant was also sought, as was the permission to record information (solely) for transcription purposes (see Appendix D). Research interviewees were granted full anonymity and absolute confidentiality (in connection to their identity)¹². Although ethical, attempts were made to ensure the research was also empowering.

We have characterized “ethical research” as *research on* and “advocacy research” as *research on and for*. We understand “empowering research” as *research on, for and with* (Cameron, Frazer, Harvey, Rampton, and Richardson 1992: 22).

Empowering research refers to seeking the active co-operation of research participants, which requires disclosure of the researcher’s goals, assumptions, and procedures. Interaction *with* research participants enhances the researcher’s understanding of what is observed and heard, which can only increase the validity of the research. Empowerment of a researcher’s participants also involves acknowledging the

¹² Such is the reason why the researcher provided pseudo names for the youth participants, and the community, and similarly protected the identities of all other research respondents.

latter's agendas, in addition to one's own (op cit). Activities that were added onto the research in order to meet the community's needs generated new insights into previously defined activities¹³.

The participant observer method of getting involved as much as possible in community life and circle-related activities aided in the researcher's understanding of the peacemaking circle process, and encouraged interaction with community members. It also represented part of an effort to "give back" to the community. As Wolcott (1995) notes:

There is an art to gift giving. There is something of an art to gift receiving. These arts are by no means unique to the conduct of fieldwork, but fieldwork entails a subtle kind of exchange, one that often involves gifting across cultural boundaries where exchange rates may be ambiguous or one wonders what to offer in exchange for intangibles such as hospitality or a personal life history (91).

Gift giving involves using judgment in a social context with which one may be unfamiliar; thus, understanding and adaptation are key. It was well understood that when people offer their time and share their stories (which are often personal), something should be given in return. Sending thank you cards to all participants, and feeding donuts to police officers are generally understood as appropriate tokens of appreciation. The tradition common to many First Nations cultures, of giving tobacco to male Elders and tea and/or pastry to female Elders in return for their wisdom, was respected. It was important to be particularly mindful of not interrupting Elders as they were speaking,

¹³ The researcher volunteered to aid in the organization of a youth leadership program, took minutes during a meeting between the justice committee and the Yukon Territorial government to discuss and develop a mutually agreeable Contribution (funding) Agreement, organized and held a youth circle to solicit input from young people on what they need to lead active and healthy lives, and attended weekly Community Justice Committee meetings.

even to clarify information or to take the conversation to researcher-imposed, or “desired” directions. Interviews with Elders and others often resulted in being even less structured than they might have been in another environment, which brought conversations to very unique, interesting, and useful directions, that otherwise might not have been pursued. Ideas for gift giving to young people appeared to transcend cultural boundaries. While youth were always offered some type of non-nutritional snack, it often appeared as though the attentive ear of the researcher was more appreciated and held greater compensatory value.

The more complex experiences of gift giving were never clearly understood; it not only varied because of the culture, but it also varied between individuals, and their perceptions of bribery, or intrusiveness:

The shock comes from the sudden immersion in the lifeways of a group different from yourself. Suddenly you do not know the rules anymore. You do not know how to interpret the stream of motions and noises that surround you. You have no idea what is expected of you. Many of the assumptions that form the bedrock of your existence are mercilessly ripped out from under you (Wolcott 1995: 94).

During five months of volunteering with the Community Justice Committee (by attending meetings), a balance between a helpful level of welcomed participation and what may be interpreted as impositional opinion-sharing was difficult to strike. As a non-First Nations outsider with a “formal” education and a lack of practical experience in community justice, the possibility of provoking defensiveness on the part of Community Justice Committee members was a constant reality. Silence was often the chosen option, out of caution and respect.

Due to the researcher's interest in the opinions of youth who had experienced the circle as offenders, and the lack of numbers of these youth¹⁴, it was imperative that the researcher pursue interviews with them. Considering the high unemployment rate and dependence on social assistance among youth and their families in the community, the value placed on money became readily apparent. Although the research and living allowance was not abundant, it was decided that a small sum of money (\$15) could compensate each of these youth for their time. However, the researcher risked having her intentions interpreted as bribery and perpetuating inequality through discretionary decision-making. It was difficult to achieve a balance between attempting to operate according to the norms of what was expected and considered appropriate, without unknowingly or unintentionally devaluing what was shared.

Self-monitoring actions and impressions the researcher is giving is intimately tied to the principle of respect, and related to trust. Because of the small size of the community and the various factions within it, the researcher quickly learned that where she spent her time and the people she spent time (or was seen conversing) with formed indelible impressions on community members' minds. Some community members engaged in alcohol consumption; the rest shunned it. Some First Nations community members did not have good relations with the RCMP; however, the Community Justice Committee had to maintain professional relations with them. The researcher learned that her affiliations identified her with certain factions, which were applied as labels, and had the potential to create misunderstanding. Because the researcher had to remain neutral in

¹⁴ Arguably, this is a limitation of the research, if one considers the generalizability of the findings.

her interactions, it was difficult to establish trust with certain groups by sharing experiences with them, without risking trust or credibility with others. As a guest invited to attend Community Justice Committee meetings, the researcher was privy to confidential information; she thus had to avoid social situations which might potentially expose her to witnessing breaches of conditional sentencing orders or circle sentencing preparation agreements, which would have presented a huge conflict of interest.

The majority of the time spent in the field was fraught with challenges, the most basic and consistent of which included a perception regarding a level of indifference in the community, which compounded the researcher's difficulties with securing widespread participation in the research. It is unclear how much was due to the perceived ineffectual nature of the research, a lack of trust, a lack of interest in the topic of justice, or other issues, and how much was due purely to other responsibilities, different priorities, or a lack of time. The researcher witnessed relatively low attendance at a community justice consultative meeting, and individually-consistent representation at peacemaking circles. Two signs were posted in the community to solicit participation from adults in focus group discussions; however, no serious enquiry resulted (see Appendix E). Other than four focus groups conducted with young people and one with the Community Justice Committee, no other group discussion materialized¹⁵.

¹⁵ It is difficult to interpret selected manifestations of indifference toward the research, without making glaring assumptions. It has been suggested to the researcher that people must have a sense of stability and control over (and functionality within) their own lives before getting involved in larger community issues. Since traditional philosophies of Aboriginal (and restorative) justice involve addressing underlying issues related to the conflict, perhaps the majority of community members were not ready for the research (or, for that matter, community justice itself). Warry (1998) recognizes that an enormous amount of spiritual strength is required to talk to an outsider about personal issues such as abuse, addictions, and conflict with the law.

Attempting to Foster an Understanding of Local People and Traditional Knowledge

...[S]uccessful qualitative interviewing requires an understanding of culture (Rubin and Rubin 1995: 19).

This proposed research could not have been conducted in isolation from the larger political, cultural, and community context within which the community justice initiative has been implemented. An understanding of the traditional knowledge of the First Nation people and their experiences since European colonialism is crucial in providing a context to the research. Each community justice initiative is a product of the people, the cultures, and the history of the community, and a reflection of the values and priorities inherent in its operations; ignoring these influences would have been disrespectful to the community and detrimental to the validity and utility of the final research product.

An understanding of the context is also integral to understanding the people, who provide the majority of the research information. For example, the researcher experienced the privilege of getting to know a young community member. He often spoke with anger of the harsh realities of his life experiences. He imparted insightful and heartfelt criticisms of the effects of the Mission School and how money corrupted his people and their traditional ways. The researcher could have taken his attitude and anger personally; instead, the approach taken to attempt to understand his anger through the context of his personal and cultural history proved extremely useful. As a result, a great deal was learned from him, and he implicitly reinforced the importance of monitoring her own behaviour as a non-First Nations researcher.

To accomplish anything more than a superficial understanding of any culture, it has been suggested that researchers must begin by “unchaining [them]selves from [their]

own assumptions and creating new ones that correspond to the meanings of [their] [participants]” (Tax 1970, in Thomas 1993: 9). Instead of attempting to impose the values of the researcher’s social system on the research, a certain degree of detachment from personal and other societal values had to be maintained (Lyons 1989). The researcher learned that this did not require abandonment of personal values and socialization, but temporary suppression was necessary. The values and culture of the research participants had to be respected and actions of the researcher had to coincide. A delicate balance of worldviews was necessary in order to truly appreciate the spiritual and culturally-based methods by which the community engaged in community healing.

The Inevitability of Value-Laden Research

Foucault argues that “social science is not and has never been a neutral enquiry into human behaviour and institutions” (in Cameron, Fraser, Harvey, Rampton, and Richardson 1992: 2).

“[S]cience is not achieved by distancing oneself from the world”...when possible, researchers should defer to the input of the [participants] in the belief that “it is possible to pursue both the truth and solutions to concrete problems simultaneously” (Whyte et al. 1991, in Thomas 1993: 26).

[I]nterviewers are not neutral actors, but participants in an interviewing relationship (Rubin and Rubin 1995: 19).

By the end of the field portion, and upon leaving the community and returning to her home base, the researcher found it difficult to maintain an (even constructively) critical viewpoint toward the research topic. The researcher had the opportunity to learn about, witness, and recognize some of the many barriers that challenge the hard work and concerted efforts of the Community Justice Committee. A deep sense of loyalty was felt

for the community, in the sense of not unduly criticizing their work and progress. A feeling of gratitude for having been granted access and the experience to conduct research in a setting otherwise closed to outsiders conflicted with an academic objective to remain critical and relatively unattached. An attachment to certain youth in the community, who often visited the researcher's home and with whom contact and good relations are maintained, was established. With time, it was realized that the obligation to report findings truthfully should not be *despite* these interests, but *because* of them. An ethical obligation to the research participants was also recognized, in terms of reporting information that was shared, regardless of its potential lack of popularity.

Through the Eyes of the Researcher and the Participants: Limitations of the Thesis

Limitations of any study are related to value orientations, the availability and willingness of potential respondents to participate, and simple odds, which dictate with whom the researcher comes into contact. In addition, the researcher had limited time (5 months), funds, and experience with and knowledge of the community; these realities undoubtedly affected the depth and breadth of information reported, and its representativeness of accuracy.

The potential for volunteer bias (Palys 1992) in this research was high; presumably, those who agreed to be interviewed by the researcher had opinions (whether critical or supportive of community-based justice) that they felt were important. However, it was rare that those personally approached by the researcher for an interview declined. While posed without orientation (e.g., "what is it like to live in [Prospect]"), some interview questions focused on challenges, and the eventual focus of interviews was

often shaped by interviewees. Upon request for perceptions, praise or perceptions of success often take a back seat to criticism or perceptions of failure.

An equally important consideration is the fact that the researcher was only exposed to certain community members¹⁶. For example, due to the increased presence of First Nations youth in the community's public space (and other unknown reasons), the researcher was able to interview more First Nations youth than Euro-Canadian youth. Because of the researcher's presence during summer months, the boredom expressed by young people may have been at its highest, and community members who otherwise may have participated may have been away. Due to the fact that the researcher did not knock on residents' doors, many community members subsequently interviewed were initially acquainted with the researcher during community events or in public space of the community.

Subsequent to having left the community, the researcher learned that once school started in the fall, and winter approached, dynamics changed, whereby a conscious effort to resolve selected issues and concerns was strengthened. A grant was received by the community, which facilitated the initiation and continuation of more frequent recreational activities for the youth. The grant enabled the employment of several young people as organizers, and provided more positive and constructive ways for young people to spend their spare time.

¹⁶ For example, the researcher was not able to meet or interview most of the "silent majority" (see Chapter Six), and, when asked, a couple of non-First Nations residents declined to be interviewed, because they believed their opinions may be unpopular.

Thus, several facts must be borne in mind when interpreting the results of the research: communities are dynamic entities, that are constantly changing and developing; perceptions of respondents may be dependent on most current realities; criticisms are often voiced more profoundly than compliments; and most obviously, but perhaps most forgotten, research is a product of the questions asked, a certain amount of participant self-selection, and reflexive interaction between a researcher and her participants.

Research Implications: Avoiding Intellectual Colonialism

“Research, which so far has been largely the instrument of dominance and legitimation of power elites, must be brought to serve the interests of the dominated, exploited and oppressed groups” (Mies 1983, in Kirby and McKenna 1989: 15). First Nations peoples have suffered extensively and disproportionately from the negative effects of the application of British law and justice, and their needs have long been silenced and unrecognized by western culture (Morse 1983). First Nations youth are further marginalized and oppressed: they are dominated not only by race, but also by age and experience. Although Susan George argues that “research concerned with social change should focus on the rich and powerful and not on those on the margins” (cited in Kirby and McKenna 1989: 27), the *demystification* framework suggests that “the paucity of research about certain groups accentuates and perpetuates their powerlessness” (Reinharz 1992: 191). The needs and opinions of First Nations youth must be heard, to demystify and “raise consciousness” of their specific needs within a larger political framework (Reinharz 1992: 191).

Warry (1998) notes that “the time has long passed when anthropologists could speak ‘on behalf of’ Aboriginal communities” (248). Likewise, research which claims to “give public voice” (Rubin and Rubin 1995: 19) to First Nations peoples is inherently paternalistic and perpetuates colonialist practices. Warry (1998) notes that First Nations peoples are perfectly capable of communicating their own positions, arguments, and research agendas; thus, the role of the social scientist is “to continue to offer methods, theories, and perspectives to First Nations communities in the hopes that, as outsiders, we can be of assistance” (Warry 1998: 248).

The purpose of the research was to bring all interested voices together, in the form of a dialogue. Despite claims that critical research on the subject of restorative justice can be fatal to the movement and its proliferation (Warry 1998), constructive criticism by the very people whose views and involvement are integral to the development of community justice is necessary. In First Nations communities, “research can improve a community’s ability to understand issues and plan for the future” (Warry 1998: 246). The community is provided with additional information and different arguments that can be used when negotiating with governments, or attempting to resource new initiatives. When compiled together, the ideas of participants may help the community to further address contemporary and historical concerns, while contributing toward their own ultimate objectives.

The Generalizability of the Research: The Specific Nature of a Community-based Justice Initiative

Because community justice is developed and operated at a grassroots level, it is essential to understand the dynamics of a community, along with individual and system level challenges, in order to even begin to assess how well a *specific* model of community justice accomplishes its own objectives¹⁷. Although this research concentrates on the realities of a particular community and its justice initiative, it identifies certain elements that are useful in accomplishing specific objectives of an initiative. Once this knowledge and understanding is gained, it can only be applied to a specific community context. However, the identification of challenges of specific initiatives may shed insight that may be useful, and identify potential problems not uncommon, to other community-based justice initiatives at earlier or similar stages of development.

¹⁷ As an analogy, one cannot assess how well a certain make and model of a car runs, and one definitely cannot generalize how well or how poorly that model of car runs, without understanding the internal mechanics of that specific car (Yukon Territorial Court Judge 1998).

**CHAPTER FIVE:
ADDRESSING THE PAST AND PLANNING FOR THE FUTURE:
INDIVIDUAL AND COMMUNITY LEVEL CHALLENGES CONFRONTING
PEACEMAKING CIRCLES**

*T*he prison is to many Aboriginal youth what the mission school was to their parents (Jackson 1996)¹.

The following two Chapters weave together the voices of young people, community members, and system representatives regarding their perceptions of the challenges confronting community-based peacemaking circles practices at the individual, community, and system levels. The perceptions of youth are presented first, to emphasize that their voices must be heard². The community level challenges are subsequently discussed, followed by the system level challenges in Chapter Five. The voices from within community and system level dynamics demonstrate that larger forces of power complicate community-based justice initiatives, the participants in circle processes, and, thus, the lives of a community's members.

In addressing the past (the mission schools) and developing the present (peacemaking circles), the community prepares itself for the future (increased self-sufficiency). Essentially, confronting the past and planning for the future is what

¹ Jackson (1996). Lecture in "Proseminar". Burnaby, BC: Simon Fraser University.

² For the purposes of this discussion, the identities of young people are protected by anonymity promises. To differentiate between the genders, the female youth were assigned names pertaining to birds or nature; the male youth were given names having to do with four-legged animals. One exception is Wounded Eagle, whose given name describes the researcher's perceptions of him as she got to know him. All other research participants are referred to according to their classifications as "community member", "Community Justice Committee member", or according to their professional justice titles. All quotes and references to respondents (not book/article authors) were obtained through formal interviews.

peacemaking circles purport to do. This Chapter will begin by describing the community and situating it in an historical context, and introduce the community-based justice initiative that was developed and implemented to address the historically-based issues that plague the community.

The Historical and Community Context

Prospect³ is a small Yukon community of under five hundred people, half of whom are First Nation, and half of whom are Euro-Canadian. The Aboriginal residents of Prospect occupy one of 13 communities in the Yukon Territory (there are eight designated “reserves”), and represent one of 17 Yukon First Nations⁴ (LaPrairie 1992; Yukon Department of Justice 1998). Prospect is one of three communities of the First Nation. One of the other two communities, of another First Nation’s descent, originally used the community’s site as a hunting and fishing camp. As they began trading and inter-marrying with the Tlingit people, they adopted the Tlingit way of life. Today, the First Nation is represented by both heritages, and attempts are being made to keep both of their languages and cultural traditions alive (DIAND 1997).

In Prospect, the Indian reserve was (and continues to be) on the opposite side of the river from the main non-Aboriginal community. This arrangement was partially because non-Aboriginal peoples could not build houses on Indian reserves, but also a reflection of the “persistent social gulf between the races in the Territory” (Coates 1991:

³ This community cannot be referred to by its real name. For the purposes of sharing the results of the research while maintaining anonymity, it will be referred to by a pseudo name: Prospect.

⁴ Including those First Nations in northern BC, within Yukon Territorial Government’s jurisdiction (Land Claims Negotiator 2001).

222). In 1948, a Native-white community association was established but soon disbanded. In general, the First Nations and non-Aboriginal peoples move in different social circles (op cit).

Of all the Yukon communities, Prospect has the highest Aboriginal population between the ages of 16 and 35. Community justice is apparently more difficult when First Nation members live off-reserve, populations are relatively transient, and people are not permanent residents of the community (LaPrairie 1992). Over half of the First Nation's members live off reserve land⁵ (DIAND 1997).

Prospect has an RCMP Detachment, a (volunteer) Fire Department, a School, a Post Office, Hotel, service station, restaurant, and general store. Other community services include the First Nation office, Social Services office, an administration building, library, an Anglican Church, a small Yukon College campus, and a Community Hall (DIAND 1997). The community is accessible by road, and its close proximity to Whitehorse has an effect on community and social dynamics. For example, there may be less initiative to develop recreational activities for youth, since access to Whitehorse is convenient.

One hundred and fifty years ago, Native peoples in the upper Yukon River basin had not yet come in direct contact with Europeans. In short order, fur traders, missionaries, miners, government agents, more non-Native settlers, and others invaded the region and upset a culture that had developed over thousands of years⁶. The sudden

⁵ "Off reserve" land refers to land outside the community, or not Crown (or reserve) land designated for the First Nation (Land Claims Negotiator 2001).

⁶ See Ken Coates (1991). *Best Left as Indians: Native-White Relations in the Yukon Territory, 1840-1973*. Montreal and Kingston: McGill-Queen's University Press.

exposure to white people was compounded by the relocation of many communities and the bringing together of small groups into a larger sedentary community.

Many First Nations people gave up their traditional subsistence lifestyles so that they could make money by working on historically important developmental infrastructure projects. These projects had a significant impact on the community of Prospect. More non-First Nations people began living in the area, and with them came the institutions commonly associated with “western” representations of settlement: education; government; religion; and justice. For the most part, these institutions completely ignored the culture, laws and traditions of the people who had occupied the land for thousands of years prior to their arrival ([Prospect] Community Justice Committee 1998).

Traditional laws, language and values, which were ingrained in the First Nation’s culture, were eroded by the imposing presence of the Mission School in Prospect. A Residential School was established in 1901 and the last school closed in the 1960s. Children were forcibly removed from their homes and brought to spend most of their childhood years in the school, for the purpose of assimilation. Some were sexually, physically, and emotionally abused in the school, and all were forbidden to speak their traditional language, or practice traditional culture. Traditional laws, such as respect for Elders, respect for women, respect for the land, and the obligation to pass on oral history and culture to children were not taught, and thus, not practiced in the schools. Many of these children never learned traditional values or ways of seeing, and were made to feel ashamed of their heritage. And by the time these children became adults, since they had

not experienced child rearing by their biological parents, very few understood what good parenting encompassed⁷.

Until the 1950s, Yukon Aboriginal peoples retained some freedom, as they were largely segregated from non-Aboriginal society. This situation changed dramatically in the years after 1950, as development, government intervention, and continued discrimination served to restrict Aboriginal peoples to the Territory's social and economic margins (Coates 1991).

Many of the problems that currently exist in the community of Prospect are related to the cultural genocidal effects of the Mission Schools on the children and their families, years of systemic discrimination, the establishment of separate residential reserves, the attitudes of the white majority, and the policies of the federal and territorial governments (Coates 1991). Aboriginal laws provided a foundational morality that governed good behaviour. The erosion of Aboriginal languages and values, the outlaw of spiritual practices and ceremonies, and the destruction of traditional methods of dealing with conflict devastated a community that felt lost and uprooted on its own land. The predominant after-effect of the events was anger, which led to the abuse of alcohol for a First Nation person unequipped with traditional ways of coping (e.g., spirituality). In response to a question about the causes of youth crime, one Prospect Elder recounted his memories of the effects of the Mission School in Prospect, and the various manifestations of colonialism, and the feelings of anger and hopelessness that still accompany them:

⁷ Prospect community member (1998).

I hate to use the Mission School, because it's getting worn out, blaming other people. But it's not the abuse that bugs me so much; it's what they did; they chopped off and severed my relationship with my Elders, with my aunts and uncles. I've had an opportunity to take a certain amount of it, but the full portion of my life that I was supposed to be spending with them has not been completed. So therefore, I have to scramble around today to try and get some of the other things that are important. There's a lot of anger within me for what the government has done to First Nations people. You see, the First Nations people, they had a government system in place. Due to some of the governments and their high position, thinking they know everything, they feel that First Nations people are better off in a non-Native society than a Native society. So they threw the policies and regulations on us to kill off the Indian government. And this started way before the Mission School. When they outlawed potlatches. Anything that resembles First Nation authority, First Nation government, they ruined. They incarcerated some of our Elders for holding these ceremonies, because they viewed it as paganism. When you look at in the 1800s how the government started the Mission Schools, they went and focused on the kids. Most of them said that they removed them from the communities, away from the influences of the wigwam, and put them in a controlled environment where they "beat the indian out of them". It really, really bugs me.... I feel so angry inside... 125 years ago they came into the Yukon, and look at the mess they've created in 125 years. Just outrageous. I don't know...I don't know. But what can you do? (Prospect Elder 1998).

After little more than hundred years since western colonization, Prospect is still suffering from the destructive cycles of alcoholism and various forms of abuse, which, for the most part, instead of traditional teachings, were passed on through the generations⁸. These factors combined are manifested in many of the present-day crimes in Prospect: property offences, drug offences, incest, and sexual and domestic abuse.

⁸ According to a Community Consultation Report conducted by a consultant in 1996, Prospect's community members believe the following social issues are a direct result of colonialism: drug and alcohol abuse, family violence, suicide, the mission school syndrome, the high school drop-out rate, dependency on the band, health issues, sexual abuse, violence, youth crime, unemployment, and a loss of traditional cultural values (Elliott 1996).

The residents of Prospect have seen many of their people sent to jail for these behaviours – a response that has not served them well⁹. In recognition of the challenges confronting the community, and the ineffectiveness of the Canadian justice system in responding, the Community Justice Committee in Prospect was established, with the following goals and objectives:

1. to increase community responsibility and capacity to delivery of justice services and reduce the incarceration rate of people served by the Committee by:
 - working co-operatively with federal, territorial and First Nations justice agencies to develop an effective pre- and post-charge diversion project;
 - making training opportunities available to justice committee and/or community members;
 - finding and operating a safe house in Prospect for victims of crime;
 - working collaboratively with the First Nation to help meet the community's justice needs under self-government.
2. to help prevent crime and reduce recidivism rates by defining and reinforcing community standards of social justice and decency by:
 - involving Elders and other respected persons in the justice process;
 - providing opportunities where the offender can better appreciate the impact of his wrongful actions on those he has harmed;
 - educating and encouraging the broad participation of the people of Prospect in the community justice process;
3. to promote a community healing process and reintegration of offender into the community by:
 - involving people with whom the offender has a significant personal relationship in the process of dealing with his misconduct;
 - providing opportunities for offenders to regain the trust of the community through a commitment to community living agreements and healing plans;
 - providing opportunities for victims and other affected parties to forgive and to re-establish healthy relationships with offenders;
4. to increase the Prospect Community Justice Committee's ability to offer effective projects and support networks to the victims of crimes

⁹ Most 16-30 year old community members have had some conflict with the law, and many have seen the inside of prison walls. "What kind of future is that for the community?" (Prospect Elder 1998).

and abuse by working with [relevant community agencies]

Source: Aboriginal Justice Strategy Contribution Agreement (1998: 14-15).

The Prospect Community Justice Committee mentions that its “most ongoing project” is its “continued efforts to support people through the various crises that are sure to occur in their lives, and to give them the unfailing sense that there are people who do care for them and who do believe in them, despite any ‘trouble’ they may have found themselves in” (Prospect Community Justice Committee 1998: n.p.). In addition to offering Peacemaking Circles/Circle Sentencing, the Prospect Community Justice Committee provides the following services: Post-Charge Diversion, Mediation, Probation Assistance, Pre-Charge Diversion, Sentence Advisory, Community Work Assistance, and a Dispute Resolution Council (see Appendix F).

Since its inception, the Prospect Community Justice Committee has, on average, processed 15 charges through community court peacemaking circles, per year. Between 1992 and 1997 (inclusive), a total of 75 charges have been processed through circles (which represents six percent of all charges); however, only five cases involved youth as offenders (Funding Proposal to the Aboriginal Justice Directorate 1998).

The Voices of Young People: Crime, Community, Culture, and Conflict

Approximately 15 percent of the current population of Prospect is comprised of youth¹⁰. In traditional times (before colonialism), “youth crime [in our community] did not exist” (Prospect Chief 1998; Prospect Elder 1998). The lack of youth crime in traditional times is partially due to distinctly different social and legal definitions of crime (see Oberg 1934). It is also due to the traditionally communal nature of the First Nation, whereby all adults provided parenting to all the youth (Prospect Elder 1998), thus preventing their violation of social norms and “deviant” behaviours¹¹. Due to the Mission School, many of Prospect’s youth today receive minimal parenting, and have little understanding of the values of traditional culture (Prospect male youth focus group 1998); for some, this steers them in the direction of crime.

[Young people in Prospect come into conflict with the law because of] family life, troubles. They don’t get much of an example here...I don’t think their parents give the attention they should to them. They don’t wonder where their kids are at midnight (Crystal Water 1998).

They don’t have a lot of direction...they haven’t been taught the meaning of right versus wrong. The parents don’t spend enough time teaching their kids; they spend their time at the bar (Blue Ocean 1998).

At the very most, some youth expressed a basic knowledge of their culture, and a desire to know more (Prospect male youth focus group 1998; Prospect female youth focus group 1998). While some youth stated that their cultural knowledge would not necessarily keep them out of trouble, because their understanding of values such as

¹⁰ “Youth” refers to young people under the age of 19. The researcher was told that there are approximately 50 young people in the community of Prospect, and she had the pleasure of speaking with/interviewing just over one third of this population. It is important to remember that a significant proportion is also under the age of 12 (who, due to their young age, were not interviewed for the thesis research).

¹¹ This is consistent with the popular belief that “it takes a whole community to raise a child” (Prospect community member 1998)

respect are not applied (or witnessed) in the traditional sense, community-based methods of conflict resolution have connected some youth with the Elders. Cultural conflict between modern ways of living occurs for the current generation of youth, which has been exposed to non-traditional ways. The lack of knowledge or desire to know may have a lot to do with the cultural imperialism of mass communications and the exposure of youth (even in remote communities) to mass consumerism (which promotes materialism) and popular culture, which changes the emphasis and even the very essence of certain values (Whitehorse defence lawyer 1998).

The youth who participated in the research stated that they get the impression that adults label all of them for the behaviour of the few youth in Prospect who commit most of the youth crime (Prospect female youth focus group 1998; Prospect male youth focus group 1998). Although break and enters, thefts, vandalism, and underage drinking are the most common crimes committed by youth in Prospect,

In our community, it happens a lot, but there's only a few people doing it. They're giving all the other kids a bad name (Blue Ocean 1998).

It's like the drunk stereotype for Natives. The majority aren't drunk, but there's a few on the streets that are, so they get the stereotype. It's just the same with the kids. The few that are criminal, those are the ones that make the impact and the ones that everybody remembers (Crystal Water 1998).

In addition to experiencing generational labelling from within the community, they also told stories of being negatively stereotyped by outsiders because of the name their hometown has made for itself:

We'll get "the people from [Prospect] are always drunk" (Blue Ocean 1998).

Last year in shop class, the teacher asked me where I was from. I told him [Prospect], and he just said, “oh yeah, that’s a nice place”. And then he just drifted off, and said, “but it’s got a few problems”, and I was like, “yeah”...It isn’t that great, and I can see how you could walk on the streets and think, “ew”. Just because of the stuff you do see on the streets. It doesn’t give a good impression (Crystal Water 1998).

These perceptions inevitably have a negative effect on the youth, which may lead youth to resent their community, and increase their feelings of apathy. Conversely, it may also encourage the youth to defend it, which may enhance their desire to do something about it:

And when you meet people and tell them you’re from [Prospect], you feel like defending it, because it’s our home. So you say, “no, [Prospect] isn’t that bad...”. And it makes me so mad that people type us, even though we’re not part of that group, so it drives me crazy (Blue Ocean 1998).

The general perception among young people interviewed is that adults do not listen to them, do not support them, have no confidence in them, and do not care¹².

They need to listen to the youth. They never listen to us; they always know something better than us. All the time... We try to talk to them a lot [about getting the youth centre back], but all they ever say is, “hey, we’ll look into it”. But they never go any further than looking into it. I guess they’re not paying any attention to us, because there’s a few kids around here who like to get into trouble, so they put it otherwise toward all of us. They don’t even look at our ideas after that (Running Fox 1998).

One youth emphasized the value (and rarity) of having adult community members listen to their concerns and support them:

I don’t think kids here have very much support. From anyone. There’s the odd person that will sit down and talk to a kid. Like you. They just want to be heard. They just get negative backlash from everyone. Like of course kids are going to do bad things throughout their lives. I think they just need to be heard. Someone to just sit down and listen to them. Like

¹² This was also witnessed in the willingness of youth to participate in the research. The researcher was generally accepted among the young people of Prospect. All (with the exception of one) youth who were asked to participate in discussions agreed, and thought of it as an opportunity to voice their concerns and be listened to.

it's going to be hard to open them up; it's going to take a long time. Like until their late teens. Because we didn't have a voice at all when we were kids. It was just like, "oh you stupid kid. You don't know anything". But with a couple of people you could just sit down with and have a really good conversation and tell them all your problems; it doesn't have to be their parents. Because a lot of the time their parents aren't there (Blue Ocean 1998).

This youth recounted her uncle's voiced lack of confidence in her, when she mentioned her goal was to leave the community and graduate from high school. His view of her future was not as promising. She explained that his perception is due to what he has observed about other young girls in the community; however, this comment made her very defensive about her inherent worth and potential, and she appeared frustrated with the fact that she expects more of herself than some of her family members expect from her (op cit).

Peacemaking circles and efforts at community development may not work to their potential if youth have the perception that they are not being taken seriously or their words have no legitimacy. The feedback they receive from adult community members may erode any confidence they have in themselves to make a positive difference in the community, and in their own lives.

Even if it's like meetings. The adults and the people who run this community don't really listen to us. We're just here for their little game; we're just there to make them look good. We're there just so they can say they're "involving the youth". So if somebody asks, they can say, "yeah, there were kids there". But they don't have to say, "yeah, we heard what they said" (Crystal Water 1998).

When young people get the impression that "no one cares" (Prospect female youth focus group 1998; Prospect male youth focus group 1998), their instinct is to leave. In leaving, the intention may be to get attention, to get involved in other activities where

they may feel more useful, or to inadvertently fulfil negative prophecies of others. Others' low expectations or perceptions that the youth have no value, or feelings of being unloved may discourage youth from exploring their potential, lead them to loathe themselves, and/or force them to seek belonging elsewhere. Street life forced one abused youth to get involved in drug sales, addictions, crime, and other self-destructive behaviours.

Most youth interviewed voiced very little connection to their community. When asked to describe their community and what it is like to live there, youth spoke of the “corruption” of the First Nation office, the “gossip”, the “power-tripping” and “favouritism” in the educational system, a severe lack of youth employment, the prevalence of alcohol and drugs, and the “pathetic” lifestyles that many residents lead: “their hygiene, their family lives, their morals and principles are non-existent...” (Prospect female youth focus group 1998). One female youth, who must attend high school in Whitehorse, because grades 10-12 are not taught in Prospect, spoke of her general tactic to “avoid everybody” when she comes home. She voiced disgust in some community members' contentment to live their lives as they do. While she maintained that she and her friends are “not saints”, she also distinguished herself and her friends from others whom they grew up with who have “gone downhill”. She claims that watching them “reinforces your opinion of what you want for yourself. I don't want to be like that” (Crystal Water 1998).

All of the youth spoke about the abuse of alcohol and drugs¹³ prevalent in the home and on the streets, and how it affects them:

That's where my Dad screwed up. Smoking joints to get his kicks. Never gave a shit about his kids...(Wounded Eagle 1998).

One young adult spoke of the link between alcohol consumption among the adults and its impact on both youth and unborn infants:

That's like [one young person]. I used to babysit him. His parents used to party for days....They used to go party somewhere else and have me babysit him and clean up after them. He was four or five years old. I caught him once down the hall, before I could stop him, chugging a bottle of Schnapps. And this was a regular thing for him. [Now] He's the most criminal person here! (White Cloud 1998).

Although positive role models exist, the expressed lack of a large amount has led some young people to engage in the same behaviours.

I know it happens here but no one hides it. The parents know what the kids are doing, the teachers know, and nobody does anything about it. But that's something that could be stopped. Through the eyes of an eight or nine year old kid seeing all these people drunk or high all the time – what are they supposed to think? That's how I got into drugs and alcohol....I think the community really needs to look at that (Blue Rain 1998).

One young female spoke at length about the alcohol and drug-related problems in Prospect. She asserted that young people are “allowed at adult parties if they show up with enough alcohol”, and that many youth use cocaine. According to her understanding, drinking and partying regularly result in violence, rapes, teenage pregnancies, abortions, spousal abuse, and crime. Regular consumption results in more deeply-entrenched abuse and a problem for easily influenced young people. Dependency on social assistance is

¹³ Conversations in focus groups and interviews immediately focused on this issue, although the researcher never directly asked about it. It was the most common response to the question, “what is it like to live in [Prospect]?”

perpetuated because many community members' cheques are spent on alcohol within a few days of receipt (Red Thunderbird 1998)¹⁴.

The Community Justice Committee realizes that underage alcohol consumption is a problem; however, the root of the problem does not rest solely on the shoulders of the young people:

Where do the kids *get* alcohol? Well, we all know this, but what kind of an adult would buy alcohol for a kid? What if that kid died? Do they ever think about that? They want that smoke, or a few extra ounces of alcohol, without thinking about the kids they're buying the alcohol for (Blue Ocean 1998).

Some youth maintain it is difficult to say no to alcohol, and when they drink or do drugs, they need to commit property crime to support their habit(s). This is problematic in itself, and the issue becomes something much deeper than the symptom of crime, or even alcohol consumption:

You have the youth stealing because the parents don't want to give them money because they know what they'll do with it – related to the drug and alcohol issue....maybe they should have more youth jobs...even having sports, or the club open after school – give the kids some place to go. When I came to town and I saw kids hanging out outside the bar, I see that shit in Whitehorse and when I saw it here I was totally blown away. And why? Well, they don't want to go home for whatever reason, and there's not anywhere else they can go (Blue Rain 1998).

This quote emphasizes the recognized need for increased opportunities through

¹⁴ This young female spent an entire afternoon (and had many other conversations) with the researcher, sharing information about the challenges that confront her community. She told the researcher that it "made [her] feel good to have [the researcher] ask [her] to participate, because the adults never listen". Her interest in talking about these issues demonstrated to the researcher that despite the put-downs, labelling, blaming, false prophesizing failure for the youth (on the part of adults), she has the passion, the maturity, and the potential to make a huge difference in the future health of her community. However, when she was asked by the researcher to get involved in a youth circle to discuss youth needs "for an active and healthy future", she contemplated the possibility, and eventually declined, on the advice of her mother to "not get involved". This is further discussed in the section on community level challenges to community justice.

social institutions in the community. One youth voiced the need for youth employment, both to keep him from engaging in self-destructive behaviours (used to cope with the boredom), and to make an income:

There's not enough jobs out here. There's only a select few people who get jobs out here. The rest of us sit around fucking the dog all day, doing nothing. I'm currently unemployed; I've been searching for the past couple of months and I haven't had any success yet ... (Running Fox 1998).

Endemic to most youth employment problems is the fact that when jobs do exist, young people are told they are either too young, or inexperienced (Prospect male youth focus group 1998). Another reality is that because private industry is extremely limited in Prospect, the majority of employment opportunities exist with the First Nation. However, depending on family relations, this may not present an option to some. Based on her work experience as a Community Education Liaison worker, one young adult claimed that in one recent year, the most reliant group of clients on social assistance was "the average age of the working man: 19-35" (White Cloud 1998). It was also explained that the lack of work is especially prevalent during the winter months. During the summer, infrastructure construction projects and fire-fighting provide most of the work opportunities; however, competition is fierce. The seasonal nature of employment is problematic, but also for less obvious reasons:

It gets you in a cycle. If you have all winter and have nothing to do, you dig yourself in a hole. Come summer, it's hard to dig yourself out. Especially with alcohol and drugs being so addictive. [Prospect] needs work, and especially alcohol and drug work (White Cloud 1998).

Alcohol and drug abuse and the lack of employment are circular problems. One young female noted that her male family members who do not consume alcohol manage

to find work, and keep it. She expressed regret about the fact that she has witnessed some fellow First Nations community members get employment, but lose it. She attributes the reason to alcoholism and alcohol-related problems such as theft (from the place of employment) and showing up late or not at all (Red Thunderbird 1998). She spoke with regret about the message this sends about her people, and the negative stereotypes it reinforces.

Although employment may address part of the alcohol problem, many people believe that cultural teachings provide the foundation for a healthy existence. It is particularly important for young people to be taught traditional values (which begins with respect for the self, and leads to respect for others) when they are young. It is inconsistent with cultural teachings to engage in alcohol consumption (which signifies a lack of respect for the self) and crime (which symbolizes a lack of respect for others) (Prospect community member 1998).

There's a lot of that here. That's when the cultural teachings should be taught. Instead of having traditional values set in, all they've really seen is people partying, passed out, people staggering all over the place (Furry Owl 1998).

Cultural teachings are obviously partially the responsibility of Elders and the family; however, they could also occur in school. Apparently, a basic level of Athapaskan is taught, but this is not the traditional language of the people of Prospect (Prospect female youth focus group 1998). Young people complained about the level of education they receive in Prospect, and that it does not prepare them for high school in Whitehorse. This is problematic, as is the fact that youth do not have the choice to complete high school in their home community. They are "exposed to a whole new world

full of vices” in the city, and can “lose the values they were raised with” (White Cloud 1998). Some get into trouble, and others completely drop out. “The drop out rate is outrageous” (White Cloud 1998); it has been said that it is close to 98 percent (Prospect adult 1998).

One young female related a story of getting caught for smoking pot at school. She got suspended for it, after the teacher held a class discussion. She felt that getting kicked out was not a useful response, especially since she “had a quarter ounce at home” (Blue Rain 1998). She suggested that “keeping kids at school or taking them out to teach them something” would be more productive than the “punishment” of sending them home. The alienation and stigma of being shut out discouraged her from caring. “It came to the point where I did things so I would get expelled – so I wouldn’t have to go to school anymore” (Blue Rain 1998).

In addition to the lack of cultural identity and community connection, negative labelling, feelings of not being heard, discouragement by adults, drug and alcohol abuse, the lack of employment, and educational challenges, other issues further erode feelings of self-worth among young people. One youth talked about the physical abuse he experienced at home:

I can’t talk to my parents. Not my dad. He’s kind of mean. The way he lived, and the way I live, I don’t like it. He used to beat me up, about the littlest things. My mom used to chuck a stick at my baby sister. She couldn’t go to school. Pissed me off. My baby sister getting beat up by my mom, getting stuff chucked at her: nail polish, curling iron, whatever they could grab. You just can’t help it. It’s hard (Wounded Eagle 1998).

Once voiced by this youth, other youth (involved in the same discussion) provided testimony that this situation is not unusual:

I hear a lot about that. Kids show up at school, parents fighting all the time, drunk all the time, parents fighting with their kids. They don't like it. Kids always want to leave home (Running Fox 1998).

Although many research participants did not initiate conversation¹⁵ on very sensitive issues in the community, a select few (mostly youth) did. When asked what was important to them, one youth replied:

That my baby sister doesn't grow up like I did. My sister, it's all because of this one guy. I didn't want him to die, but one person touches another, just kill him. Still to this day, I talk to him, I stay at his place, I smoke drugs with his best friend, play his games...he's a relative, but none of my relations care about him or like him...back then I never gave a shit about what happened, until I realized what happened (Wounded Eagle 1998).

This same youth expressed feeling no justice for his past abuse, and anger at having witnessed the abuse of others he cares about. He alluded to further abuse, and implied a desire for vigilantism on his part:

...I did that to one of my relations, my cousin. Pissed me off. But he's lucky. I'm kind of lucky though. Pissed me off the way he was treating his girl, the way he was treating me, himself. I seen what happened to her and to me. But I know if I would have had that shotgun loaded, he would've been splattered all over my Grandma's door. Just the way he grabbed that shotgun. Heard a trigger...I would have been gone (Wounded Eagle 1998).

These dysfunctions have had the effect of encouraging some youth to "get out as fast as [they] can" (Running Fox 1998), and desire different outcomes for their own lives, and for their future children:

If you work for a year and get out of here, you'll get out of here. But if you stay here for more than two years after you graduate school, you're stuck here. Because if you don't, you'll probably end up like half the people around here, who drink and party every day, and over the weekdays they're wandering around with no money but trying to find some way to

¹⁵ The researcher never initiated conversation on sensitive issues; when they were brought up by respondents, they were never discussed in detail.

get another drink. And I don't like that. Because a lot of my brothers drink and a lot of them have really messed up their life, and they tell me to never, ever grow up like them, and I don't think I will because I see too much around here (Running Fox 1998).

Having the desire to escape the "dead end" destiny that their community presents may not have the effect of encouraging these youth to participate in community justice initiatives, and play a role in improving their communities¹⁶. Conversely, they seem to be quite aware of the influence that their actions have on younger generations, because of what they have seen, learned and experienced from Prospect's adults. One youth, whose parents had attended the Mission Schools, was sexually abused by an uncle, physically abused by his father, very angry, passively aggressive toward others, and in minor conflict with the law. He experienced first hand the intergenerational trauma associated with the corruption of colonialism, which destroyed his culture and people, and made them dependent on the government. He feels no one trusts him, and he trusts no one. His methods of escapism included running away, drug abuse, and the contemplation of suicide (Wounded Eagle 1998). These extremely unfortunate circumstances, although debilitating, may affect him and his peers to make positive changes, as voiced by this youth, who represents one of Prospect's most disadvantaged:

I want to help the community conquer the past...help them get their courage up about the past, tell the tale (Wounded Eagle 1998).

Issues such as alcoholism, abuse, unemployment, and the educational system do not appear to be news to many of Prospect's adults. Prospect's Chief (at the time), Elders, and the Community Justice Committee appear to understand the destructive level

¹⁶ Considering the fact that "99% of northern youth never leave their communities" (RCMP officer 1998), this could have devastating consequences.

of boredom that confronts the youth, and the need for the youth centre, recreational and employment opportunities, education, cultural teachings, family functionality, programming, laughter, a greater amount of positive role models, love, and care.

One woman commented, “First Nations youth, it seems like they’re lost children. They need to find out who they are, to know they’re connected (with the Creator and others)” (community member 1998). A former alcoholic herself, she recognized that although alcohol helped her to forget the past, it also helped to ruin her children’s self esteem, their ability to deal with anger, and their future. She voiced the opinion that “our youth today are being mistreated...bad, very bad; especially in the communities” (op cit), and that it is the responsibility of adults to teach young people. The way they behave now, she asserted, is directly related to how they were taught by adults; thus, their conflict with the law is not appropriately dealt with if the family and community are not involved. She believed that adults need to share information with youth, about what they have been through, and how things came to be the way they are, in order for them to begin to heal the pain of intergenerational trauma. According to one Prospect Elder,

We might not help this generation of youth, but we can begin here to try to work on the next generation. Say the 3-4 year olds, how can they spend more time with their grandparents and uncles and aunts with the traditional ways of teaching. Even if so much of their time is spent doing that, they know what is expected in today’s world, but as people growing up, how to respect others, respect Elders. That is part of the old teachings. Many First Nations people were brought up that way. We can see that today; some of our middle-aged people are out of work so they rely on trapping, hunting, fishing, and make a good living. And you can see the respect and decency with which they treat others. Those are some of the things that were taught from a very young age. These things are supposed to last a lifetime. And when they get to a certain age they pass it on. Culture not only helps one respect others, but to respect what is around them. How do you respect the environment? The wildlife, resources, fishing. The

harvesting areas, berries. How do you conduct yourself when you do this? Those things are very important; if they were taught how to do these things they could practice that throughout their lives. I don't see anything happening in that area nowadays. People are just brought up to go to school, and they learn the language and maybe some history. But nothing is there for them to interact with the knowledge of the Elders. They want their children to be good, knowledgeable citizens and to respect the world we live in. That has to be introduced to them (Prospect Elder 1998).

Without culture, self-esteem, positive role models, and a sense of self-worth, young people of Prospect may not be entirely (emotionally) equipped or feel encouraged to fulfill their potential or take responsibility to make a difference in their communities. Traditionally, it was the responsibility of young people to work for and respect their Elders, in exchange for cultural teachings. It is an exchange that now rarely happens, but, according to one Community Justice Committee member, should.

I hear at justice meetings often, "what can we do for the youth?", but I think somehow, culturally, things got mixed up. Because usually what it is, is "what can the youth do for the Elders?" "What can the youth do for their community?" "What can the youth do for their family?" "What can they do for each other?". And I never ever hear those questions, ever. It's "what can we do for them?". And I think somehow the challenge to us is "how can we bring our youth back onto a cultural track? What can they give?". Not "what are they gonna get given?". To me that's a big thing, in my opinion that needs to be identified and focused on...I honestly believe that we've been somehow distracted from what their responsibility is in this community. They're being trained to become givers, and they're not actually being trained at all. Now, what's happening is they're takers. "Gimme, gimme, gimme...what are you gonna do for me? When are you gonna build me a youth centre? When are you gonna build me a skating rink? What's the matter with all the adults, because they're not giving us all of these things that we want". I think we've got to turn that around in the community. And I think there's people here who can do that, with the youth. And I don't know whether any of them are capable of thinking like that these days. Because it is a "me, me" world, and we see that more with our youth than any place else right now...[but] as long as we keep on doing things *for* the youth, I can almost guarantee it's going to fail in the long run (Prospect Community Justice Committee member 1998).

This statement serves to summarize this section in terms of the cultural genocidal effect of the Mission School, and the intergenerational challenges it has posed for the community and its youth. It also emphasizes the view that community development is the responsibility of both adults and youth. However, if young people are not taught traditional ways, they may not act accordingly, and they cannot be held entirely responsible for the role confusion and their lack of contribution. Arguably, the responsibility rests on the shoulders of those who can teach young people cultural values. Instead of placing blame or pointing responsibility at young people or their dysfunctional parents, it is the responsibility of the whole community to raise the children in such a way that they have the self-confidence, the skills, and the desire to contribute (Prospect Elder 1998).

Youth Perceptions of Peacemaking Circles

Among the young people who had never participated in a peacemaking circle, very few had much knowledge of the operations of the Community Justice Committee. For the most part, they did not interpret it to be much different (other than “more lenient”) than the current system. Many of the youth voiced the opinion that peacemaking circles were “just an easy way out”, and that “for more serious crimes, you should just do your time” (Running Fox 1998).

One youth admitted that his knowledge of peacemaking circles was not from having participated in one, but from what he heard on the street. Nevertheless, he had this to say:

A lot of criminals came through here and did a lot of bad shit. They went through circle court, got a slap on the hand, and an ice cream to go, and they're free. Like, a guy out here murdered a dude out in Whitehorse. Brought up with murder charges. And he went through the circle court, and got off without doing any years. Nothing. For a person like that, I'd say, throw him right in the slammer, for something like that. That circle court thing, I never really liked it much at all. Just because the people who get in trouble and get caught for it and go through that get off easy. And sometimes it's some pretty serious stuff they get into, but they get off pretty easy. That pisses me off, because for what they did, they should be getting time for it. They're getting off scot-free...I've seen people who go through circle court, but still, when they come back out, they're still doing the same shit they were doing before (Running Fox 1998).

While it is difficult to verify the extent to which this youth's perceptions are based in reality, they are nonetheless his perceptions. He also saw utility in punitive sanctioning, because of his lack of faith in the ability of community-based justice to hold offenders accountable.

A lot of people go through circle court have all their family members around, just fighting for the guy who did something bad. But they should still give the guy some kind of jail time, to let him think about what he did. Like, how come we shouldn't do him? My mom doesn't like circle court very much either. She says people should go through regular justice, because circle court basically gives you a slap on the wrist...going to jail, it's fairer. It gives you time to think about what you've done. It gives you time to think about what you're gonna do when you get out of there. Are you gonna do the same stuff, or go the straight and narrow path; if you do the same stuff, you're coming back to the same place again. So if they have a bad experience there (in jail), they're going to think, "hey, I ain't coming back to this shit hole, so why not just stay within the law lines?" (Running Fox 1998).

Although this youth has never served time in jail and his perceptions may be misinformed, he shares the beliefs of others in the community. In this statement, he fails to recognize that many offenders do not consider the consequences of their crimes in advance, and/or the possibility that community-based sentences may in fact be more challenging than he assumes. However, a subsequent comment contradicts his previous

rational choice-based assertion and implicitly supports the utility of more restorative processes, which involve facing and learning about the impact on the victim:

I've done a couple of B&Es before, actually a lot of those, out in Whitehorse. When we go to do it, we don't even think about the person, like what they'd think when they come home, because the way we think about it, is you're never gonna see them, you're never gonna know how he's gonna react, so why think about it? But when I used to do it, I did it for the rush, the adrenaline rush. Just the way you feel when you boot open that door, the way you feel when you're going right in there, you don't really care about what else you got out of it (Running Fox 1998).

One female youth's comments provided support for the value of community-based justice because of the small, kinship nature of the community. She believed that if she broke into a fellow community member's home, her victim would "feel even worse, because they know us....it would be a lot more personal and emotional....it would be like thinking, 'I know that person, but I'm going to break into their house anyway'" (Crystal Water 1998). This also implies that a youth's feelings of connectedness to the community and its members enhance the potential of community justice processes, as expressed by a First Nations professor at the University of British Columbia:

There has to be a sense of connectedness to that community, and some sense of responsibility. The potential is tremendous, because in mainstream culture the focus is on the individual, but [offenders] miss out on the benefits of public catharsis, confession, making wrongs right (e.g., apologizing, getting it out); these are powerful healing tools used by indigenous peoples all over the world. It's just North American European culture that doesn't use it. Those are powerful in a collectively-oriented society, because that's tremendous motivation if you want to be connected and belong. But if the motivation's not there and [youth] have no sense of belonging to the community, it's not going to mean a lot to them (McCormick 1997).

On the other hand, many youth who come into conflict with the law are already seriously disenfranchised by their community and thus may feel no connection, or desire

connection, especially with those who contributed to their alienation in the first place. Youth may find it more difficult than adults to identify with their victims, and, until confronted with the reality of the impact of their actions on others, may not worry about it. Cultural teachings about a young person's origin and ancestry may increase a youth's feelings of shame and/or remorse for harmful actions, and foster a desire to make amends, in order to honour the family name.

Two female youth voiced fear of having to face community members, and, dispelling popular myth, anticipated that the process would be much easier in court:

I'd want to go through the court, because I wouldn't want to face the people in the community (Still Mountain 1998).

I think I'd want to go through the court too because in the Yukon, you can get off easy. It would be easier than your whole community watching you, and knowing what they're thinking... if you dealt with it here in the community, probably a lot of people from the community would show up; but if you went to court, in Whitehorse, probably nobody would know about it, nobody would show up, nobody would find out what your sentence was, no big deal. So it would be easier to go to court (Crystal Water 1998).

Another young person reflected on the utility of having the victim, Elders, and other young people present in the circle. She implied that the respect she feels for them, and the respect and trust they feel for her, would affect her. She recognized that a breach of that respect would cost her their respect. Implicit in her thoughts is the fact that a cohesive community, and feeling a part of it, is a prerequisite to feeling accountable to it. She focused on feeling increasingly accountable to her fellow community members after being hypothetically sentenced in a circle, which would affect her decision to commit further crime:

That's a big part of the circle. Having the victim there, telling the offender, "you hurt me". Having that in your face – your conscience attacks you....that would make a person think, "whoa, what did I do? At the time it didn't feel that big but now...". That probably helps the offender a lot too – putting themselves in their position...I think the young person would be shitting their pants. Elders don't really care what they say to you. Knowing, "if I do this again, what are they going to say to me?". Some people act like they don't care but I think most people – that would hit them. Having someone there who's older, wiser, asking you, "what are you doing? Don't you think about what you put this person through?" In court you can have attitude, but in circle court that's something I haven't seen myself. It makes a person realize what they did – having to face their community, Elders and even some of the younger people who look up to them....even knowing people don't trust you or won't be there for you just because of what you did. Knowing that and having to think about that and feel that would make someone stop (Blue Rain 1998).

One young female understood the intended value of participating in peacemaking circles, but recognized that their successful outcome depends on an individual's desire to confront their own issues, face their community, and make positive changes:

I think it has potential because once you go through that, it's an emotional thing for you. Because you're speaking in front of your whole community, explaining yourself. Don't you think that would "humblize" a person? I think if it was me, and I really wanted to work on myself and I had big problems, I think it would work for me. Because it would help to get in touch with what you're feeling, and there's people there to listen, so I think it would work. But it depends on the person (Blue Ocean 1998).

Despite the outcome-focused interpretations of others, this young person added to the processual and philosophical differences between community-based justice and the criminal justice system:

I don't know if it works; although I know it goes beyond actual justice. They work on you as yourself; not on what you've done. It's like, "you did this because you have a problem"; it's not like jail, where you think, "they'll think about it and get over it". It's deeper; they need someone there to talk to them, to sort out why they did this. But it only works if that person wants it to work; if not, take the other route (Blue Rain 1998).

The young women who realized the difficulties of facing the community in the circle admitted that, if they were asked to give advice to a friend about which option to choose (court versus the circle), they would suggest court, because “I wouldn’t want to watch a friend of mine go through all that” (op cit); however, they rationalized, if they really wanted to help the person to “rehabilitate”, they would recommend the circle (female youth focus group 1998).

The support of young people for peacemaking circles is necessary to reach the long-term objectives they espouse. One young person realized the potential that community-based justice has to increase the self-sufficiency of Prospect, build capacity to problem-solve, and eventually achieve self-government:

If they did it effectively, I can see it working towards us becoming our own government – independent. I could see having that as our justice system. It’d be nice to not have to turn to what white society set up as our justice system. We could work our own problems out within our community and people (Blue Rain 1998).

These youth offered differing attitudes about peacemaking circles, but held many views in common about their community, which may or may not positively affect their involvement in community justice. The attitude that peacemaking circles are no more than an “easy way out”, and a means to a lesser sentence, is indicative that some youth are not aware of or supportive of the Community Justice Committee’s larger objective of community-building. The negative assumptions that some have made about peacemaking circles are not only indicative of the “word on the street”, but signify a general lack of understanding among community members about the objective of peacemaking circles as a larger community-building initiative.

Feelings of powerlessness and worthlessness, the perception that adults do not want their input or consider it useful, witnessing apathy among adults despite the many social issues, the attitude that they have very few positive role models in the community, and the belief that the only way to deal with the problems their community faces is to physically escape them, increases apathy among youth, making them a potentially lost valuable resource. Conversely, feelings of connectedness to the community and respect for others may encourage young people to foster and develop or maintain that connection and respect for their fellow community members and future generations. Unfortunately, the lack of connection that currently exists for many young people, if left unaddressed, may not encourage young people to get involved in realizing the potential of community-based justice efforts.

Fortunately, the difficult circumstances shared and witnessed by the youth interviewed appear to have created a strong sense of solidarity among their generation, which can motivate them to collectively address these challenges and create positive change. The interest they displayed in discussing these issues, and the frustration evident in their voices, portrays them as a very valuable resource. They have identified many workable solutions, voiced passionate pleas for change, recognized the value of problem-solving at the root, and expressed a desire for employment and a productive and meaningful future. The active engagement of and participation among youth would be helpful in improving social conditions and realizing the success of community-based justice. Opportunities to enhance their skills and capacities to resolve conflict, and to

feel valued and capable, may be brought about partially through their involvement in community-based justice, and enhance their desire to make a difference.

The Potential of Circles to Address Youth Crime

It has been hypothesized that youth may “find it too difficult to be heard, assessed and judged by their family, peers and community, to directly confront a victim...to take responsibility to speak on their own behalf, and finally, to stay on the healing path set out in the Circle” (Stuart 1997: 39). Because the Community Justice Committee usually works with offenders whom the system has miserably failed, and would rather divert youth out of the system altogether (which includes peacemaking circles, because they are post-charge), and work with them on an informal basis in the community, some argue that peacemaking circles are not the best option for youth. Some peacemaking circle advocates and critics believe that youth may not be ready at this point in their lives to make changes, and therefore not as motivated to abide by their community-based sentences:

The youth in particular are quite challenging because usually the people that this support group give a chance to is to people who have already gone through the system; they're sick and tired of it, and they want change in their life... I don't think they take it seriously and it's very challenging to find a youth that's got caught up in the court system, that we're really capable of helping and supporting toward whatever ends that may be. We worked with a group of youth last year who vandalized the school. It was quite challenging, because you tell them to be somewhere at 10 o'clock and they don't feel like showing up, or they're not there. So you really have to try to assess their intent and sincerity. And they might be quite sincere but a lot of them, I find, don't have the capability of following through with much stuff (Prospect Community Justice Committee member 1998).

In contrast, one defence lawyer (and former Crown attorney) has witnessed some youth who, “after several run-ins with the law, think, ‘God, I’ve got to change my life here, because a life of crime is not paying. In fact, it’s costing me, and I have to go to jail; it’s not fun’” (1998). Upon this realization, youth are prepared to consider the root causes of their actions, and work with their families and communities, to change. He also noted that young people are generally sophisticated, and have an incredible understanding and appreciation, which would make them good candidates for the circle¹⁷.

A couple of circle proponents have mentioned that a circle dominated by adults has less potential than one composed completely of youth.

[Discussions about] values, peacemaking skills, the importance of getting along, the importance of respect... don’t happen among youth....any system that’s run exclusively by adults is a major handicap in trying to reach out to rebellious youth. What they’re rebelling against is not so much youth, but adults (Yukon Territorial Court Judge 1998).

The Voices of Young Offenders: Experiences with Peacemaking Circles

Responses given by young people who had experienced peacemaking circles (as young offenders) were slightly, albeit not entirely, different from some of the opinions expressed by youth who had never experienced them¹⁸. Experience definitely played a role in young people’s perceptions of participating in the circle process: the more they had the experience, the more they appeared to realize that peacemaking circles and community-based justice are not easy alternatives to courts or jail. Based on their

¹⁷ However, one impediment to circle participation, he added, is with youth who are Fetal Alcohol Syndrome or Fetal Alcohol Effect, whether they are dealt with in the system or the circle, because the ability to understand the relationship between cause and effect is limited.

experiences, many youth appeared to recognize some of the objectives of peacemaking circles. Several young people noted that circles provide much greater opportunities for them to address the underlying issues that affect their criminal behaviour, enable them to re-connect to family and other community members, foster a feeling of greater understanding and acceptance, and encourage them to wish for and play a more contributive role in their community.

All of these youth mentioned having come from backgrounds fraught with alcoholism¹⁹. There are few opportunities for employment, and most of it is seasonal. These youth claimed that there is little to do in the community, and peer pressure, a lack of positive role models, and the need for money, played a large role in their offending behaviour²⁰. One youth mentioned, “When I was 16, I didn’t care if I stayed out of trouble. I figured no one else cared, so why should I?” (Grey Wolf 1998).

They see their community as a “dead end”, where they are judged and labelled for their actions, and they perceive that community members “look down” on them, because of their youth (Prospect male youth focus group 1998). One felt very little connection to the community, because “community” signified “people helping to keep kids out of trouble. But here, nobody does anything to help them” (Grey Wolf 1998). While growing up, some of these youth were involved in traditional culture (hunting, dancing,

¹⁸ Of five youth who had actually been sentenced in the circle as offenders in this community (of the seven years it has been in operation), it was possible to interview four of those five. All of these youth had been charged with more serious offences, such as B&E, assault with a deadly weapon, robbery with violence, and theft over.

¹⁹ According to respondents, all of the offences with which these youth were charged (which were sent to peacemaking circles) were alcohol-related.

²⁰ It is interesting to note that none of these youth considered themselves victims of their upbringing, environments, or historical contexts, in any sense of the word.

spiritual ceremonies), but they strayed from their culture by their mid-teens, as they became progressively involved with drugs and alcohol.

Many of the comments voiced by youth are based in comparing peacemaking circles to the court process, and jail. Many youth appeared to have very little idea of the expectations of the circle process; they related their experience as difficult, but rewarding. All of these youth admitted that they originally applied to the circle process because they heard it would keep them out of jail; consequently, they appeared to have been taken by surprise during the process²¹:

I heard it was an easy way out. It seemed easy, but I had to sit in front of my community and admit I was wrong. I didn't like that much. I figured it would be easier to confront the community than the courts, but it wasn't. A native courtworker had told me about it. The victim was there, the courtworker, chief, council, my family, the band. They told me what to do, but also asked what I think should be done. I didn't find it easy to speak in front of my own people. I sort of felt judged because all the members are looking at you thinking, "what did you do this time?". I didn't like having to face them. After that, I rebelled (Little Coyote 1998).

This youth appears to have been encouraged to feel regret for his actions, and appreciated the fact that he was asked to provide input. However, he may not have been effectively re-integrated by community members, or prepared to face the community. All of the youth mentioned that they did not want (or were nervous or scared) to meet the victim, but that victim presence had helped in their understanding of the impact of their crime.

I felt nervous confronting the victim. I wasn't worried about him freaking out though, because you can't do that in a circle sentence. You talk it out; they understand why you did it, and you understand how they feel, like if they're afraid to go to sleep at night. I thought about doing the same thing

²¹ While a couple of youth respondents mentioned having participated in the circle to stay out of jail, and because they figured it "was easier" and they would "get off", one claimed that you can't manipulate people in the circle, because "everyone watches you. The community knows".

to my grandma or an Elder and I wouldn't do that to them (Walking Bear 1998).

None of the youth felt comfortable facing the community, and Elder presence was especially difficult, which indicates a sustained level of respect:

Having Elders there made the difference because I was thinking about what they thought about me (Walking Bear 1998).

One young female asserted that she appreciated the level of support she received in the circle, but at the same time, she was too shy to speak in front of so many people, especially her peers:

If less people were there, I would have been more comfortable. It also makes it harder if there's other youth there. Sometimes there's a side you don't want to show them because they might laugh and tell others and bug the shit out of you later. If I said I wanted to go for treatment and was an alcoholic they'd make fun of me. When [one of my supporters] noticed I was trying to hold tears back (she said that in the circle), I got bugged about that later. Everyone thinks I'm a bad ass so when the soft side comes out and they've never seen it before, I get bugged. (Black Raven 1998).

Although it may have been difficult for this youth to take responsibility in the presence of her peers, it likely provided them with a different understanding of her personality. Instead of setting a bad example for the younger youth (as she had been accused of doing), the respect she demonstrated for her elders, and revelation of her more "human" side could only have a positive effect on young, impressionable participants. In addition, her "criminal identity" was likely shattered, not only in her own eyes, but in the eyes of others. A challenge to the label may have discouraged her from engaging in future offending behaviour.

Although the circle "didn't work" for another youth (in his opinion, because he re-offended), he inadvertently appreciated the value of the process. Although it was difficult

for him to face the victim, and he was asked many more questions than if he had been sentenced in court, he appreciated the fact that he was “allowed” to show emotion: “in the circle, you can release your anger; in jail, there’s no room for that, so you get in fights”; and in the circle, he understood what was going on, as opposed to in court (Walking Bear 1998). He also recognized people were there to help him, and he felt better about himself afterwards because he had taken responsibility for his actions:

I was pretty nervous. But I felt better about myself. Knowing that if I ever saw [the victim] again, I could look him in the eye instead of putting my head down until he drives by (Walking Bear 1998).

One youth mentioned that circles are “better than sitting in court, which makes you mad and doesn’t make you think” (Black Raven 1998). Another youth recognized the positive differences between attending court, and participating in a circle sentence:

After court, you go back to your cell. In a circle sentence, people show up, and you feel cared about. In the circle sentence, you get to hear other people’s experiences about what they’ve been through. In court, there’s no talking it out, and you have no control over your own fate. In a sentencing circle, the judge has to sit in the corner; he doesn’t have all the power. He’s just another person sitting there (Walking Bear 1998).

One youth also recognized that the circle provided him with the opportunity to explain himself, why he committed the crime, and if desired, to get help for underlying issues. He also appreciated the fairness of the proceedings. However, after having served a good portion of his sentence in the community, this youth admitted that he “figured jail was easier than living [his] sentence in the community”, and chose to spend the rest of his eight month sentence in jail (Grey Wolf 1998). Another youth voiced difficulty with the community-based sentence, because he originally applied in hope of being sent to the Wilderness Camp; he knew there would be no alcohol or drugs there to tempt him.

Instead, he did not have the self-discipline (and possibly the support) required to abide by the strict conditions included in his community-based sentence, which included a curfew, community hours, and abstinence from alcohol and drugs. He also chose to serve the remainder of his sentence in jail (Walking Bear 1998). Although these two youth both applied to peacemaking circles because they wished to avoid jail, they eventually realized that the Community Justice Committee was more strict than they had originally thought, and that their original assumption that the process was simple, was inaccurate.

One youth mentioned that after his jail experiences, he had an even greater desire to commit more crimes, but the peacemaking circle hearing made him think about his actions (Grey Wolf 1998). He perceived a positive difference in how people treated him after the circle, versus after being released from jail:

Some don't talk to you anymore when you get out of jail. They think it makes you a different person. After the circle sentence, people don't think you're as bad, because they have insight into your life and issues (Grey Wolf 1998).

Feelings of increased acceptance from community members was also noted as a positive outcome of the circle. Community involvement during and after the peacemaking circle makes it almost impossible for a young person to manipulate people in the circle, and to avoid detection if they are breaching their conditions in the community. Community members generally do not care if a youth breaches the conditions of a probation order, because they feel a lack of respect for the system (Walking Bear 1998); however, many youth considered the fact that "the community watches you and keeps tabs on you" as a positive element of the circle (Grey Wolf 1998). Knowing community members are watching not only encourages youth to monitor their own behaviour, but also reinforces

perceptions that community sanctions are respected, and that youth are supported in efforts to change.

Most youth recognized that to participate and be successful in the outcome, they needed to be ready to make positive changes in their lives²². While one youth mentioned he felt his potential to change was doubted during the hearing, and some voiced the opinion that they felt “judged” by the community (Grey Wolf 1998), others were surprised by the realization that community members actually cared about them and expressed faith in their ability and strength to change. The reduced perception of labelling²³, and increased sense of connectedness with family and community members enhanced the process for one young participant:

You see a side of people you’ve never seen before. It helps to build confidence because people see the good in you...them telling you that you have potential. [It feels good] knowing there’s other people who believe I can do it, rather than hearing people say, “she’s just going to screw up again, just send her to jail, it’s not worth the risk” (Black Raven 1998).

One of the most insightful comments was made by a young female who recognized that there was very little discussion of the offence itself during the circle sentence; the focus instead, was on “what [she] can do now” (Black Raven 1998), which implied an understanding of the purpose of the circle. When youth understand the intentions of the circle and community members, the result is invariably more positive.

²² One youth recognized that the sentencing circle did not keep him out of trouble, because he “wasn’t ready to stop drinking”, and another claimed that it didn’t work for him because he “didn’t want it to work”.

²³ Although one youth said he felt judged and his potential was doubted in the circle, he also said he would recommend the sentencing circle to a younger relative, because “it’s fair, and they don’t treat you like a criminal”. The latter statement may stem from his experience of having the justice committee “always on [his] back” after the circle, to ensure he was abiding by conditions. This is the same youth who subsequently returned to jail, because he felt it may be easier (although that was his reasoning for applying to peacemaking circles in the first place) (Grey Wolf 1998).

One youth claimed that he could still justify the offence to this day, and although he has changed somewhat, it did not have much to do with his experience with peacemaking circles. Arguably, the responsibility he assumes for his actions and subsequent desire to change may have resulted from his circle experience, and the encouragement he received to address the root cause of his offending behaviour:

I don't drink or smoke any more. I probably wouldn't have changed if the community wasn't on my back. Although, it's still up to me. It was mostly myself that changed me. They told me I drank too much, and I realized it. It probably had no effect on my offending behaviour though. All the offences I committed were when I was drunk. When I'm sober, I stay home. I stopped drinking 4-5 months ago, and it was my own decision (Grey Wolf 1998).

Another youth mentioned that while he has no problems with peacemaking circles per se, he attributes his change of behaviour with maturity, having a job, better family relations, and quitting drinking. Although he may not be aware of its impact, his experiences in or as a result of the circle may have effected some of these changes. In particular, he recognized the support he received from the Chief in helping him to stop drinking²⁴ (Walking Bear 1998).

It is perceived that perhaps some youth misinterpret the requirement of having the desire to change. They subsequently believe that the responsibility is entirely up to them, and support is not required; but while the decision is theirs, support from others is also necessary. Wanting to help oneself is critical; however, solely helping oneself is difficult for anyone. Perhaps the larger problem is for young people to decide, when all of their peers are consuming alcohol, that they are ready and able to quit. This recognition points

to the conclusion that individual factors have an important effect on the success of peacemaking circles, or other restorative processes. When young people take responsibility for their actions, they also take responsibility for the outcomes.

Most of these young people mentioned having appreciated or learned something from the experience, and acknowledged that they had to “be ready to make positive changes” before participating in the circle. And because of their gained unawareness of the difficulties of abiding by community-based conditions, all of these youth recognized that peacemaking circles were not an easy way out. However, their view of the peacemaking circle process was less focused on the future, and more focused on the present. They did not appear to fully understand the objectives of the circle process or the work of the Community Justice Committee: “I understand [the Justice Committee] tries to help you out, keep you out of jail, influence you to do right, instead of wrong” (Little Coyote 1998).

Since some still viewed peacemaking circles to serve the self-interested and uni-purposed objective of avoiding incarceration, they were not aware of the other objectives it attempts to accomplish. As the objectives of the circle are not limited to the outcome alone, some youth were even less cognizant of the more subtle manifestations of their own or the circle’s success, experienced in the process or in the aftermath of the circle. This explains why some youth (perhaps mistakingly) assumed they had either failed the circle, or the circle had failed them, when they had re-offended or decided to serve the

²⁴ A few of the youth respondents noted that often the best role model is the adult who has experienced conflict with the law and addressed many of the issues associated with their lawbreaking behaviour. As long as these people have healed themselves, they are said to be some of the most valuable participants and supporters of youth in a circle.

remaining portion of their sentence in jail. They concluded that they did not see much potential in the circle process to address issues associated with youth crime.

Since peacemaking circles are not technically an alternative to jail (although outcomes may give that impression), many youth did not realize their benefits as an alternative to the court process. These youth appeared to primarily view the purpose of peacemaking circles in terms of outcomes, as opposed to a process with objectives that further the larger community-building goal. If these objectives are not understood by community members and circle participants to effect positive changes, even though the outcome may not readily indicate success, less support may be derived from key people who have participated in a circle to further the larger goal.

If a youth participates in peacemaking circles for outcome-based reasons, very little effort may be made on his or her part to make positive changes, and very little may result. This may result in feelings of failure for the youth, and an increased sense of failure about him or herself, which could lead to more conflict. Community members may also perceive peacemaking circles to have failed in keeping that young person out of trouble, which may reinforce public opposition for community-initiated justice. This may also perpetuate the attitude that transformative alternatives are no more successful in addressing issues associated with youth crime than the current system. In this sense, community peacemaking circles may never reach their potential.

Community Level Challenges to Community Justice

A perhaps less well-developed attribute of restorative models of justice is how communities of victims and offenders can be active participants in the process (McCold

1996). This is particularly important in small, northern, First Nations communities where community support and ownership of justice initiatives are integral to their success, especially when the reassertion of power and control over justice at the community level is a primary objective of engaging in restorative methods (Griffiths and Hamilton 1996; Stuart 1996; Bazemore and Griffiths 1997).

There is a lack of documentation of the issues related to the “role and impact of community dynamics on restorative justice initiatives” (Griffiths and Corrado 1999: 238), which must be understood when considering their potential for success. Community engagement, public information and consultation, support, inclusivity, amenability to change, and adequate follow-up are critical factors in a circle initiative’s success (Stuart 1996; Stach in Green 1998). If these elements are not taken seriously or accomplished, “there is high risk that people may become very critical of the circle and as a result, jeopardize the effectiveness of future circles” (Stevens 1994: 27). Other factors, such as community apathy, resistance, fear of change, misinformation, power imbalances (within circles and communities) and severe dysfunctionality within communities, if present, can pose substantial challenges to community-based justice (LaPrairie 1992; Griffiths and Corrado 1999; Depew 1994).

One challenge to community justice is related to community members’ perceptions of “community”, and whether their definition of the concept is consistent with the reality of their community. One young person described her community as her “special spot”, others as “a place”, but most young people recognized their community to be comprised of family, or described it as “where my people are from”. Contrary to the

view among some academics that “community is not a place” (McCold and Wachtel 1998: 21), Prospect is what community means for many of its members. Crime affects those in the surrounding geographical community, so there is a need to repair the harm in the community of place (Pranis 1998). The community’s social conditions and history also affect crime; thus, the community is part of the solution (White 1998).

Ideally, community has been described as “a group of people with a shared interest and a sense of connection because of that shared interest” (Pranis 1998: 42)²⁵. One young woman contextualized her definition of community in terms of the importance of widespread community interest in and ability to work together and effect positive change:

I call “community” a group of people living together. I think to call it a community you have to have people working together. That’s a really cheesy term, but it’s true. And you don’t get a lot of that here. We want people to be interested in making something better...there’s just a few people in this town that actually care, I think. And they go overboard in trying to make things happen. It’s a lot of work, but I think we need a lot more people’s input around here (Crystal Water 1998).

The connotative value of “community” is related to a sense (or lack) of connectedness²⁶. Two female youth reminisced about when the parents would play hockey together with the children, and lamented the fact that it no longer happens. One youth explained that her parents have “gotten sick of [the attitudes of] certain people, and

²⁵ In this sense, the “community” referred to most often in this research is largely the First Nations community, and others who share this interest. The presence of both First Nations and European Canadians in Prospect poses a challenge to community justice, which was also manifested in the research. Because of the shared past of the effects of colonialism, and the shared interest in healing for the future, First Nations community members have a vested interest in peacemaking circles. The possibility that Prospect’s Euro-Canadians do not share (and some may not understand) this experience may not encourage them to fully support community-based justice, or see value in its potential to address these issues.

grown away from the community” (op cit). Another youth maintained that she did not want a role in her community, or to be involved with “a lot of the other people” because

I hate it when people gossip! They don't even know you. I hate it when people judge me, based on the little mistakes I make. If anybody's going to be judging anyone or gossiping about them, it shouldn't be us they talk about....(Blue Ocean 1998).

Another young person echoed these concerns, but clarified that the strength of the impact of certain people's less positive qualities overshadows the “good” people in the community, despite the fact that the latter represents the majority:

The hostility of certain people! I find certain people to be very judgmental. They're all “uppity” on themselves. There's so many nice people in this community. But that's not the first impression I got when I moved here. My first impression was mean people in general. That's got to change. Because lots of people come through [Prospect]. I've heard from many people that this is not a good place....to be, or to visit. I think a lot of that has to do with the people they meet who are from here (Blue Rain 1998).

A young female spoke of the necessity for more frequent community events, to increase connections between people (adults and youth in particular). She recognized the value of community involvement for mutual learning, sharing, and healing (Blue Rain 1998).

As Pranis (1998) has put it,

Communities are value-laden structures. Resilient, sustainable communities are built on respect, caring, taking responsibility, fulfilling obligations, a sense of shared fate. If we want people to be respectful, they need to experience being respected. If we want people to care about others, they need to feel cared about...(op cit: 45).

Arguably, a Community Justice Committee is obligated to practice the values that are characteristic of a healthy community, and the responsibility of adults to demonstrate

²⁶ As noted earlier, many youth did not voice connection to their community, which would not have a positive effect on their consideration to commit acts against it. Most offending youth believed that their actions had no effect on

these values toward young people. When community members experience care and respect (among other values), they practice those values in the community. This method of community living is reciprocal, as every community member both gives and receives. “The existence of structures or processes which facilitate giving and receiving will increase the capacity of the community to meet the needs and interests of its members” (Pranis 1998: 45).

The development of a community justice initiative requires a major commitment from a few key respected community members who are representative of a larger cross-section of the community and willing to take some risks and make a difference (Yukon Territorial Court Judge 1998). However, the sustainability of an initiative requires the commitment, support, and active involvement of community members. For various reasons, it appears that the Community Justice Committee of Prospect does not have widespread community support or involvement²⁷. Due to its initial interest and effort in supporting a specific case involving community members, the first circle was conducted without widespread community consultation²⁸, which may have resulted in negative attitudes among residents toward community justice, and the belief that community interests were not being taken into consideration.

the community as a whole.

²⁷ In a small community, it is difficult for an outsider to interpret what constitutes a “lack of involvement”. However, a lack of widespread or diverse involvement was noted by the researcher, in the sense that it appeared that the same small group of community members were present for circles, justice committee meetings, and a community justice consultation meeting. Conceptually, residents may be supportive of circles, but active community involvement is crucial for community-based justice to further develop, be successful, and survive.

²⁸ An interested community member and local judge carried out the first peacemaking circles within a few moments of their decision to try the process in the community.

Exclusion (however unintended) is antithetical to the core values underlying the principles of peacemaking circles and community justice (Nares Mountain Wilderness Camp 1998), and it has the effect of eroding any potential support before it is given the opportunity to develop. Hence, further development of the initiative may take place without the involvement of a larger representation of community members, whether due to their lack of interest or otherwise, making it less relevant to community needs. This might lead to misunderstanding of the objectives of the initiative amongst those not involved, and have the effect of creating resistance among “outsiders”:

Yeah, there’s a lot of resistance; there’s a lack of understanding, part of which could be resolved; we could take some time to increase community awareness through education. A lot of it has to do with misunderstanding. But, in a way [the criticism we receive now] is good. At least they’re giving a shit now. Before they never did. Before, what the system did was never a part of them. At least now, we’ve generated interest (Prospect Community Justice Committee member 1998).

However, providing community members with information is not the only requirement to fostering community support. As a result of colonialism, First Nations peoples have developed a dependency on the RCMP, professional agencies and the federal government to settle community conflicts. Communities (and the First Nations portions of mixed communities in particular) have been denied most of their innate capacity to problem-solve or settle disputes (Yukon Territorial Court Judge 1998):

...Some people are quite comfortable to have the police take care of the issues, the judge, the probation officer, because we’ve become dependent on an institution. And I think when we start alternative justice methods in a community...I think there’s also a lot of criticism that comes with it. Because people are quite comfortable in having to call the cops when something goes wrong (Prospect Community Justice Committee member 1998).

A healthy community is directly related to the level of community members' participation toward that endeavour; without the effort, improved relationships and fundamental changes will not occur (op cit)²⁹. Another example of the effect of colonialism is evident in its erosion of the value of equality, which also affects support for community justice:

Even in our own leadership, it's like that; among our own people, because they've been assimilated. So there's some of our people that think to be successful, they have to be better than others. They've been brainwashed by the system. How do they look better? By putting the rest of us down, and by putting down this committee here, that's putting its best efforts toward trying to create a place of equality (Prospect Community Justice Committee member 1998).

One former RCMP officer of Prospect recognized that any new initiative in a First Nations community must be sanctioned by community women and Elders, as they hold positions as keepers of culture and knowledge. Their endorsement of an initiative lends invaluable legitimacy and credibility, and can allay fears of change. If a community is not amenable to change, new community justice initiatives could be taken as a threat to the "stability" of some community members.

I think they're still a bit leery; they're scared, because it's still something new. But I don't think people even care here. People don't want things to change. They're scared of change. Someone might come in and try to start up this big new thing, that they think is going to help everybody, but people are opposed to it because it's different. So they fight, and it impacts on the kids (Blue Ocean 1998).

Evidently, a lack of community support has an effect on youth; youth learn about

²⁹ Related to community health is the extent of community development. Griffiths and Yerbury (1984) list five indices that can be used to measure the development of a community: the organizational/institutional structure of the community; employment rates; the proliferation of Aboriginal-owned enterprises; the band council; the extent of self-government; and personnel resource development (e.g., education, etc.).

their parents' resistance to community justice, and the added resistance has the effect of disabling community and outside financial support for community justice that may have otherwise been useful to youth who come into conflict with the law. Negative information spreads about the concept of community justice, and people become even less interested in finding out more about, and participating in, what it does and can accomplish.

I think some are for it and some aren't. But you see that all over. There's the pros and cons. The ones that aren't for it, might not be fully informed as to what goes on; they probably never came to a circle themselves. They just hear the hearsay or assume that this and that happens, but they never participated. (Prospect Elder 1998).

Misinformation about the purpose of the peacemaking circles process exacerbates the problem of offenders who apply to and participate in peacemaking circles for self-serving reasons. Assumptions among community members about the process as an "easy way out", or offender-focused "cake walk" then flourish, further eroding support for an otherwise legitimate and well-intentioned initiative, and otherwise-shared community interests³⁰. As a result, divisions that already existed within the community are widened, positions for and against community justice are exasperated, and the unintended exclusionary nature of community-based justice continues.

With the people of [Prospect], if they really wanted to know, if they really wanted to care, over the past seven years, they would have come out to get a better idea. But they never do. They just sit back and bitch. But those who have at least made the effort to come, I'm more willing to work with and address. But others just bitch; it's chronic in [Prospect] (Prospect Community Justice Committee member 1998).

³⁰ Consultative forums provide a method of discovering what community interests are, and/or what may be behind fears of change. However, this may be difficult if community members do not attend community justice consultative forums.

Many proponents of community justice in Prospect have responded to criticism from community members by claiming that negative opinions stem from a lack of information and participation, which is a circular problem³¹. However, it is unclear whether community members feel that their presence is welcome in justice committee meetings and events, or if they have made a conscious choice not to become involved, for whatever reason³². One young person recognizes that

...there's a lot of people outside the Yukon who are jumping for it. Any way to do it. There's actually more input from everywhere else in the world than there is in this community (Blue Ocean 1998).

She may be referring to the annual peacemaking gatherings held at the Wilderness Camp, which is part of an organization set up and run by a couple of Prospect's Community Justice Committee members. Justice officials and restorative justice practitioners come from as far as South Africa to learn about peacemaking circles, and the values they espouse. While these gatherings undoubtedly enhance the national and international profile of the community and its healing approach to justice, this may come at the expense of the community's own support from within. Without denying the immense importance of educating criminal justice system personnel, focussing all efforts on

³¹ Contrary to this assertion, one non-First Nations community member had participated in a sentencing circle, but due to her dissatisfaction with the process as an observer, she never returned. In an interview, she criticized circle participants for not having taken the theft seriously, was unsupportive of the fact that the First Nations young offender was not living in the community (but had family there), perceived that the victims were treated unfairly, questioned her hypothetical applicability as a non-First Nations community member, noted a lack of follow-up and a breach of conditions in subsequent circles, interpreted sanctions in general to be too lenient, questioned its efficacy over the retributive court system, and expressed a general lack of faith in the process to prevent re-offending. It is noteworthy that this woman had been the victim of a B&E herself, on a prior occasion, committed by a First Nations youth. She alluded to racial-based tensions in her exchanges with the boy and his father, and spoke of continued feelings of victimization from the crime. When asked, she preferred that the youth be dealt with in the court system, because "there are other systems in place for first offenders", and "circle sentencing wouldn't help him anyway, since his parents were unsupportive and practically condoned his stealing" (Prospect community member 1998).

³² As in any community, factions exist. Whether due to differing values, culture, perceptions on justice, degree of healing, or other priorities, community members have the right to choose how they spend their time and how involved they want to be.

educating the outside may leave the community's own members uneducated, and feeling unimportant, alienated, and excluded, which may only lead to feelings of bitterness, greater resistance, apathy, and increased divisions between factions in the community. In effect, the community's own problems, and community-level issues inhibiting widespread support remain unaddressed, or at least, misunderstood.

Part of the challenge, which is apparently not uncommon in small First Nations communities, is rooted in the reluctance to become involved:

They're scared of criticism, not only from the accused, but members of the family, maybe their own family. In a lot of these cases, there are inter-family things. Indifference on the one hand, but the reluctance to become involved due to criticism is a challenge. But I think that is one thing that will change. The *silent majority* is slowly starting to stand. Things will improve. In my 20 years in policing Aboriginal people, things have improved unbelievably, in terms of Aboriginal people taking control of their own destinies (Prospect RCMP officer 1998).

Ross (1996) offers an interpretation of community skepticism for community-based justice, which appears to be entirely unrelated to any opposition for its principles or objectives:

The history of many communities is in fact the history of losing power, first to outsiders and then to those at home who emulated the outsiders. In many of those places, significant power is already concentrated in the hands of small subgroups, and the powerless are all too familiar with how it has been used against them in the past. As a result, any justice proposal that involves the transfer of even more power into those hands will set off alarm bells instantly. Many people begin their response to anything new from a stance of deep suspicion (Ross 1996: 204).

Reluctance can also be explained by the concept of "the rat syndrome" (op cit).

Apparently reinforced for many years since colonization, "the silent majority" represented the majority of community members who believed that informing authorities about what was happening was undesirable, because those people who divulged information usually

ended up in trouble and/or being punished (by the authorities or other community members)³³. This approach is closely tied to apathy. The opposite value, taking responsibility, “underlies the potential of the [circle] process” (op cit). If a large group of community members began to take responsibility for issues confronting the community, and stood up and voiced their disapproval, different values would be reinforced, and issues could be dealt with, instead of hidden and left to fester.

You need people who are strong enough to sit there, to have these people to have that kind of respect for them. It’s a punishment in itself to have to have to go and appear before these people... And that is one thing that will change the young people. That kind of value. That kind of respect for these people. They know they’re getting nothing in court. Young people aren’t scared of the police any more. Young people aren’t scared of the courts any more. Young people aren’t even scared of their parents anymore. But, community consensus, they’re still scared of (Prospect RCMP officer 1998).

This officer believed that although the community of Prospect falls victim to this “unwritten rule”, it is “slowly coming out of it now”. As a member of the Justice Committee, he witnesses community members, formerly part of the “silent majority”, beginning to develop and implement community initiatives that address underlying community issues. With time, he hopes, the vocal minority will become a vocal majority³⁴. When young people witness more adults taking responsibility for issues and making concerted problem solving efforts, Prospect’s youth may follow the example.

³³ This became apparent when one young person commented in an interview, “whatever I see, if I don’t like it but don’t want to get in trouble about it, I just bite my tongue. I’ve seen a lot of shit around town, but just haven’t told anybody. I’d get my ass kicked if I told. In a way, it’s sort of minding my own business”.

Feeling more comfortable in voicing their opinions regarding what they do not like about what they see encourages the value of taking some responsibility to address social issues.

The issues behind the silence may fuel controversy among community members, and pose challenges to community justice. The lack of widespread community involvement may be partially due to neutral indifference, and/or it may be based in apathy. While some community members have travelled far on their healing paths, others have not begun. Their disinterest in helping themselves is manifested in their apathy toward and criticism of community justice, which focuses on addressing underlying issues of conflict and dysfunction. Some may not feel ready³⁵, capable or be interested in embarking on this journey (Prospect community member 1998). Divisions in the community and the resistance to community justice may occur, or widen, if community members perceive the Justice Committee to be comprised of those who are attempting to impose health or spirituality. LaPrairie (1992) provides a related interpretation in her study of Yukon communities:

³⁴ In response to the underage drinking problem in the community, a few community members established a "Community Watch" initiative, whereby they would take turns being "on duty" on weekend nights, breaking up bush parties and taking underage drinkers home to their parents. An Elder also spoke of the prevalence of cocaine in the community, and its use among young people. His preferred method of addressing the issue, he stated in an interview, would be to threaten to post their names in public if they did not stop dealing cocaine in the community. Because he (and apparently many others) knew the identities of the dealers, it frustrated him to see nothing done about it.

³⁵ Plested, Smitham, Jumper-Thurman, Oetting, and Edwards (1999) note in order for community-based prevention and intervention efforts to be successful, a community must be aware of its problems and ready for change. If a community is not ready, failure of a program cannot be attributed to the soundness of the programmatic model, or the quality of planning. The authors have identified nine stages of readiness, beginning with: no awareness; denial; vague awareness; preplanning; preparation; initiation; stabilization; confirmation/expansion; and professionalization. These stages are assessed by evaluating the community on six dimensions: existing prevention efforts; community knowledge of prevention efforts; leadership; community climate; knowledge of the problem; and resources for prevention. Of particular relevance to the community of Prospect is the recognition of the importance of community climate. Despite a core of active and knowledgeable leaders, community climate will affect community support for an initiative. The authors also note that without community support, the future of the program is limited, once funding dries up, and at levels of readiness beyond initiation, community climate is critical to the further development and success of the program.

The apathy which often confronts those interested in exploring or mounting new initiatives (or informing the community about important and relevant issues), seems to have emerged from a sense of helplessness about the prospects for change because internal problems are rarely identified or openly discussed. People do not feel they have any control over the forces which affect their lives and so, for many, participating in events such as workshops appears futile...It is generally the same people who assume responsibility for everything. It is difficult to encourage a sense of volunteerism where unemployment is severe and where people, as accepted practice, rely on somebody or something else to solve their problems (114).

This is not to assume that a need for healing is only prevalent among those without power. The presence of “unhealthy” leaders in a community with control over justice introduces the potential for power abuses:

Sadly, there are many dysfunctional communities where the groups in power promote “traditional healing programs” for one reason only: to prevent their abusive friends from being truly called to account in *anyone’s* justice system, Western or Aboriginal. It is not the teachings themselves that are responsible for such abuse; it is their misuse by desperate people in desperately ill communities (Ross 1996: 15).

Unhealthy leaders may focus on symptomatic issues that disguise the root of the underlying and larger problem. For example, blaming young people for underage drinking or other crime-related manifestations of dysfunction diverts attention away from other deep-seated issues that may be confronting the community. Unaddressed issues have the potential to foster corruption and present imbalances within communities, which can be manifested in peacemaking circles.

One former RCMP officer in the community, who was well liked and trusted by community members, asserted that the “problems in [Prospect] are many; [Prospect] has all of them” (1998). It is believed (by the Prospect Community Justice Committee and other peacemaking circle advocates) that taking responsibility for justice at the local level

has the potential to increase functionality within a community, which is a main rationale for peacemaking circles. Many communities are inherently dysfunctional, and fraught with internal conflict. Instead of taking a self-defeatist approach and believing that community functionality is an impossibility, one Community Justice Committee member believes that “out of chaos, comes order”, the less “harmonious” a community is (whatever the definition might be), the more desire it has to make positive changes:

You go out and see what moves people, it's pain; it's not joy or harmony...[the pain] forces one to question what is going on in a community. Because if it seems like everything is falling apart, maybe that's a good thing, to initiate change in the community...how should we feel when we see these communities struggling? Should we feel, “oh my god”? or should we feel some, perhaps hope? That they're going through their own hell and that it's not gonna be too long before they too take charge of their own destinies. It's a different way of seeing things. There's always hope... and that's the thing we have to maintain in all the confusion, the chaos, the struggle, the suffering and the pain. And if we can hang onto that, then we're a part of the ushering in a better age, a better time, a better way of life. For all people. That's what we're doing. So there is some pain involved. But that's part of the plan, apparently (Prospect Community Justice Committee member 1998).

Although the objective of peacemaking circles and community justice is to build community, some maintain the position that a community must have a certain degree of health and functionality before engaging in its own justice processes, and that “the more functional the community, the more potential restorative justice has” (former Prospect RCMP officer 1998). Ironically, the communities that are most in need of alternative justice mechanisms are those that are most dysfunctional, and have the least capacity to develop and sustain them. “Dysfunctionality” may include behaviours which are not contrary to the law per se, but serve to fracture community relations and cause disorder

(e.g., solvent sniffing, substance abuse, clan disputes, power imbalances, unhealthy leaders, and political bickering between families).

An Elder noted that the addictions of alcoholism are sometimes manifested in other forms of vice, which are also problematic to the functionality of the community, and encourage people to question the legitimacy of prominent members and Elders. A lack of credibility has the potential to erode public confidence in a community's leaders, and the community-based justice initiatives they espouse.

Another thing I think is a real downfall is bingo. It seems like after 3 pm we have no more Elders in town. You mention the "B" word in any meeting, you get so many bad looks...when you're drinking and sober up, some people go to bingo, or they smoke grass, and they figure, "well I'm not drinking", but that's not the case, because you have the same behaviours, the same attitudes, and it gets worse. Some of these bingo halls, big arguments break out; if they don't win they get mad. It's like drinking all over again. Whether they know it or not. I think they do, but they're in so much denial (Prospect Elder 1998).

Some believe that a community must have cohesiveness and (at least a desire for) health, before community justice can succeed. It is a fairly common belief that people need to heal themselves before they can take on the responsibility of healing others through peacemaking circles.

I'd find it hard to take advice from someone who's out there drinking themselves. They're not helping. They have to be on the road to recovery or well themselves. They can't be sitting in the justice committee one afternoon, and then down at the bar at night, or smoking drugs or doing any kind of drugs. I don't think that's right. You can't tell someone to quit drinking and go to counselling if you're doing that yourself (Prospect Elder 1998).

Prospect's youth are neither oblivious to, nor unaffected by this issue:

I think the adults have to really start working on themselves before they can really do anything about us. There's a lot of problems with them, too. So before they try to do anything about us, they should look at themselves

and sort out some stuff. Because I look at the Band, and this whole place, and there's always someone bickering, and there's always someone taking advantage of the little things they have... There's just a lot of people that make me so mad because they're so consumed with their own stuff (Blue Ocean 1998).

When asked about what can be done to address community level challenges, youth had varying opinions. One young female suggested that people "get a better family life", but was not sure how. "Outside help", she claimed, would be as unacceptable as it has always been, due to historical experiences, and the lack of desire to see or experience change (Crystal Water 1998). One Elder believes that

The community needs to build and heal itself first.... The other thing is that resources could be used more effectively to look at social conditions, social problems that exist in the community. We need to look at what we can do to help upgrade the social lifestyle of the First Nation people and the activities of the children so that they could become more active and involved in what's happening around them. And they could be more involved in the decision-making that's going to affect their lives. That needs to happen, but, there's so many things happening, we forget that the band is going in leaps and bounds ahead in administration, in business, and in land claims negotiations. But the social aspects have not grown to any great extent. They're being left behind. And for the band to be healthy, it has to run parallel with other development; and the social development of First Nation people has to be parallel (Prospect Elder 1998).

Imbalances within communities can manifest themselves in community peacemaking circle processes; and imbalances within circles can be equally problematic. "Circles have the potential to work extremely well, when the value of equality [which underpins it] is respected" (former Prospect RCMP officer 1998). A main intended benefit of the non-hierarchical nature of peacemaking circles is that everyone, regardless of status, has the opportunity to air feelings and opinions, and has input into the final sentence. This ensures that the needs of women, youth (who are considered more

vulnerable groups) and the community in general are voiced (Griffiths and Hamilton 1996; Griffiths and Corrado 1999). Because victims are already in a place of weakness or vulnerability, it is critical that either intensive preparation is undertaken with victims prior to the circle, or certain types of cases do not go to circle at all. Where imbalance is not offset by some other visible community support for the victim, the logic of a community-based sentencing hearing is dissipated (Stach in Green 1998). In cases of domestic violence, there are often long-standing power imbalances between offenders and victims; it is thus unrealistic to assume that women who have been subjected to a pattern of repeated abuse will suddenly be able to face their abusers (Shaffer in Green 1998).

When you already have a situation of intimidation on the part of the woman...you can have a woman who has no ability to say what she feels, not only to this man, but with others. She's been threatened, beaten, she knows her place. She knows what she can say and do, when she can say and do it, and to whom she can say and do it with. So when you put something in a circle that's already been created in that image, it doesn't change it at all. It doesn't make it safe for her to say things. And if you convince her, somehow that it is safe, and she does, then you're setting her up to be beaten again, when she goes home. And we know of instances where that has happened, where a woman has spoken in the circle and said what she wanted to say, because she was told that it was safe, but before 24 hours were up she was being beaten on by her partner in an emergency situation where she had to get out (Victim Services Worker 1998).

A spousal abuse survivor's role in the circle is further complicated with the blurring of the distinction between their role as victim, and offender supporter. When they are asked to speak, they feel divided in their responsibilities as a spouse, but also as a victim of assault. The offender's family's presence further places them in an awkward position, which reinforces the need for preparation, strength, and support on the part of the victim (Prospect Community Justice Committee member 1998).

“Unless inequalities are acknowledged and attended to, they can easily undermine the equality with which the pursuit of a common good is assumed to endow a sentencing circle” (Cayley 1998: 206). If a victim feels compelled to comply with “the consensual community interest” (Cayley 1998: 207), instead of insisting on her injury, satisfaction, or safety, she may say nothing at all. Thus, the valuable contributions victims can make in terms of denouncing an offender’s behaviour and sharing experiences about the impact of the crime are not heard. The idea of creating balance within the circle is negated, and the victim’s victimization is doubled.

Other manifestations of imbalance can occur when a justice committee appears to be, or is, offender-focused, when offenders have closer or a greater quantity of family relations on the justice committee (or in the circle) than the victim, when belief systems about spousal abuse are not challenged, or when gender biases or overwhelming support for the offender are present in the circle (Victim Services Worker 1998). Despite a belief that the criminal justice system is not effective, and peacemaking circles have potential, one RCMP officer noted:

In circle sentencing, in most cases, probably about 80-90 percent of the people are for the accused, and very few people, very little support is for the victims. It seems like a lot of times that the accused is the good guy, because there’s so many there to back him up and assist him. So the victim generally has maybe one or two people who come to support. That’s not right. It needs to be more of a balance, so the victim feels more secure. And if you’ve got all these people saying what a wonderful guy the accused is, they feel stifled or afraid to say what they really want to say (Prospect RCMP officer 1998).

Participants of earlier circles have been accused of focusing their energy on keeping an offender out of jail (Victim Services Worker 1998), which results in ignoring

the needs of victims. According to circle proponents, these debates were due to the punitive reputation of the courts, but have largely dissipated with increased levels of trust for the system since its involvement in circles (Yukon Territorial Court Judge 1998). In the opinion of a Prospect Community Justice Committee member, the Committee's intentions at the beginning were to support the offender, and nothing more. Accusations have been made that circles have taken place without victim participation, which "compounds their hurt" (Victim Services Worker 1998). Although this may not be the intention, "that is the message that comes across" (op cit).

We're asked all of a sudden to deal with other things, and know all this other stuff. I didn't know that all the players in it were our job. We were asked to support the offender. That was our initial request from the justice system; to support this person during their sentence. So fairly quickly on, we were accused of neglecting victims. We didn't neglect victims, or it certainly wasn't intentional. Once this was raised to us, it proved that victims had been poorly dealt with before. There was a case of spousal assault and the guy (the offender), and the victim was there too. Now in the court system, the victim wouldn't be able to sit there and just say her side, without being cross-examined. They could speak as long as they want, and no one would interrupt them. So the initial criticism that victims were neglected (actually the circle provided them with the context where the victim could speak his/her mind safely and without interruption or cross-examination). But definitely we had to evolve to a more victim-focused process. But initially, that wasn't requested of us (Prospect Community Justice Committee member 1998).

Thus, victims' needs may be voiced, but this does not guarantee that they are actually heard, or addressed. Although "a victim has a much better and richer opportunity for deciding how and to what extent they're going to participate, and a much better chance of having an impact on the process in circle sentencing than in court" (Yukon Territorial Court Judge 1998), this does not automatically provide a safeguard to potential abuses of power. An understanding of abusive relationships is required so it is not

assumed that the victim has taken the opportunity to voice needs. The outcome is that principles of the circle, such as honesty, openness, balance, and equality may not have been practiced:

What happens mostly is things don't get said, because you have people sitting around in a circle who speak from the heart, these women still know that they can't; that they're going to have to pay for it later on. Because they've learned over the years that's what happens. So you're defeating the purpose of what the circle is there for, what's supposed to happen; you're not hearing what her needs are; you're not hearing what she needs to have to be safe in the relationship...So what you're trying to do by creating balance is gone. It just can't happen (Victim Services Worker 1998).

It is possible that "some people are somewhat skeptical of the influences of family members and friends and that maybe in a circle sentence, the truth is not going to come out" (Prospect RCMP officer 1998). And because circles can be very moving, and positive, it may also be difficult to speak up and voice concerns:

Circles can be very moving; people communicate with each other on a level that they often don't. That doesn't happen very often in the justice system. People get really caught up in that, communicating on a feeling level. You start believing in this process, not that you shouldn't, but it's easy to get swept along, when really there should be some cautionary stuff going on. I guess it requires that people be concrete when they look at each other, and asking, "does this person want to change?" "do they have the ability?" "are we capable of giving them what they need so they can do it?" "or is it an unrealistic type of plan?" "are there flaws that will set them up?" it's hard to be of the view where you say, "I think there's a problem here". Partly because there's the air of positiveness. Who wants to be the person who says, "I object"? I sat in this circle where there was incredible support for this man, and I knew there were problems, but what happened in that there were some other things that weren't being brought out in the circle. Unfortunately, we didn't have permission from his family to bring it out, but I knew that we were going to walk out of there and everything was going to be sabotaged immediately because nobody was looking at these other pieces that were incredibly relevant as to whether this man would be able to do what he said he was going to do (Victim Services Worker 1998).

One spousal abuse survivor voiced great dissatisfaction with the treatment of her case in the circle. Her needs were left unaddressed³⁶, she was emotionally unprepared, and her desires were left unfulfilled. She stated, “it depends on who you are and how the community feels about you. He got a slap on the wrist” (Trickling Creek 1998). This lack of preparation erodes the potential of circles and their community support. If victims are re-victimized, and the perception that the process is an “easy way out” (and a sure-fire means of avoiding incarceration) is perpetuated, community justice may have a difficult time receiving the full support of community members.

In another interview, a young woman actively contemplated her choice to participate in a circle with her abuser. At first consideration, and although she expressed very little faith in the justice system (due to the way in which it handled her case in the past), she expected it would be more appropriate punishment for her ex-husband. At the very least, she figured “the guys in the pen won’t take nicely to what he did. They’ll take care of it” (White Cloud 1998). She was also charged with assault with a weapon, although it was in self-defence and in relation to her ongoing victimization. Upon further discussion within her focus group, she began to believe, as a victim and offender, she may benefit more from participating in a circle, for the same reasons:

...Out here, with family, Elders, and my people, I would have support, and they would know the whole history of my ex-husband and what we went through. They seen me with the bruises and black eyes...Thinking about what I’d have to go through in court, circle court might be better for me. I’d have more understanding. People would have a better understanding of how we got there (White Cloud 1998).

³⁶ She received no compensation, nor genuine apology from her abuser. Because of the lack of preparatory work, she was emotionally overwhelmed during the hearing, and could not speak. The justice committee told her that the offender’s sentence was up to her; however, when she asked for jail, it did not happen.

One young female experienced peacemaking circles from a victim's perspective, and felt no justice. Instead of seeing family support as a positive characteristic, she witnessed it used as a method of "getting off", rather than a way to heal:

In circle, people know you, so they let you off easier. My Dad had two counts of assault and one kidnapping. He only got two months probation. They just let him off. He walked out with no worries, no problems. That probably had a lot to do with the fact that people in the circle knew him and sympathized with him. But in the criminal justice system, that [spousal abuse] would really be looked down upon. They probably would have come down hard on him and sent him to jail. It pissed me off that he didn't get anything for what he did to my Mom. They just let him go. That made me really mad. My Grandma came up to me happy and crying and said, "your Dad doesn't have to go to jail". But I was like, "fucking yay". I wanted him to go to jail. I did (Emerald River 1998).

This young girl distinguished between the attraction of peacemaking circles for an offender, and for a victim. As a victim herself (witnessing her mother's abuse at the hands of her father), her needs were not considered, or met. Had he received anger management or counselling in the community, she felt she may have been more amenable to the outcome; since he did not, temporary incapacitation and punishment would have met her needs on a basic level (Emerald River 1998).

It appears that most of the concern with peacemaking circles on the part of victim supporters is in relation to spousal abuse cases. Although circles provide a good opportunity for victims to participate meaningfully, voice pain, ask questions, and receive closure, these benefits cannot occur if adequate preparation has not taken place. This refers to providing victims with information to give them a concrete understanding of the process and its challenges, addressing preliminary and ongoing healing needs by devising and supporting their efforts to follow a healing plan, and respecting their choice of

whether and when to participate. A balanced justice committee and efforts to create safeguards against post-circle retaliation are also crucial (Victim Services Worker 1998).

A respectful forum, based on equality, engenders respect for the process, which encourages compliance and honesty from participants³⁷. Follow-up and support from community members are necessary elements in ensuring compliance and progress. The more committed the support group, the more likely an offender is to stay out of trouble and make necessary long-term behavioural changes in his/her life (Green 1998.). Without the support of the community, it is unlikely that the circle will be successful.

The informal social control role undertaken by community members when engaging in follow-up can be considered both a positive and a negative element of peacemaking circles. This is positive for several reasons: the youth who has agreed to conditions of the community-based sentence realize that community members are always (or may be) watching, which encourages internalized self-control and moral self-discipline. Offenders also know that they have support if they are considering behaviours and choices that have contributed to offending in the past. From a negative standpoint, community members are encouraged to “rat”, which may be uncomfortable for many. On the other hand, the sharing of information (with the Community Justice Committee) increases offender accountability in the community; and it is unlikely that the same amount of information sharing occurs with probation officers.

³⁷ This is particularly important for youth offenders. It is easy for a young person to promise the court that s/he will follow through with court-ordered provisions (assuming a lack of respect is present). It is more difficult to make empty promises when the control is informal and community-based (provided a youth has respect for the community and its members) (former Prospect RCMP officer 1998).

Some academics have considered the enhanced informal social control to be a form of net widening (Schiff 1999), in the sense that it has the potential effect of increasing the strength of the community net, and widening the net of social control in general. Others, however, have asserted that net widening per se is not the problem. Increased government social control over young offenders is problematic; but increasing the strength of the community's net of social control (in lieu of government control) is actually important and imperative for relational rehabilitation to occur (Bazemore 1999), and an objective of community-based justice.

Conversely, it has also been argued that there is a "lack of surveillance in small First Nations communities" (LaPrairie 1998). Unbiased follow-up is critical to ensuring the safety of the community is being protected. It may be difficult (or a conflict of interest) for an offender's support group members to alert the Community Justice Committee co-ordinator if they are aware of information that indicates a breach, since it may result in jail time for the offender (a revocation of the community-based sentence)³⁸. Some research participants noted that if a Community Justice Committee co-ordinator (responsible for administrative follow-up) is not "strong", objective, or is too closely tied with certain families in the community, he or she may also have problems breaching the offender (Prospect RCMP officer 1998)³⁹. Because of the individual, case-by-case nature of community justice, certain breaches may be ignored, and others may be reported

³⁸ This is further complicated if support group members have not journeyed very far on their own healing paths. They may not see benefit in reporting certain breaches, may engage in power-imbalanced practices by covering up for the offender, or may even not be in a position to support at all.

³⁹ However, the converse is just as, if not more, problematic. Leaving the responsibility to breach in the hands of the RCMP or absentee probation officer, two "professionals" with little or no knowledge of the community or the offender, is reminiscent of some of the problems inherent in the practices of the current criminal justice system.

(presumably, based on the extent of the offender's prior efforts to comply); however, this discrepancy also creates suspicion on the part of those not directly involved with the offender⁴⁰.

If breaches are not reported, and/or if nothing happens once the breach is reported, people learn to believe that compliance is not necessary, and, according to perceptions of the outcome, the option was indeed an easy way out (Prospect Community Justice Committee member 1998). When an offender is returned to court because of a breach of his community-based sentence, a Yukon Territorial Court Judge states he is caught in a difficult position. If the community is willing to continue working with the offender, and considers the breach a "minor slip" among many other accomplishments, returning him or her to jail is counterproductive, and not advisable. In addition, the decision to re-incarcerate an offender for a breach can also be unconstitutional:

...If I say, "thou shalt not drink", and he drinks, then I'm putting him in jail because he drinks...we have to be sensitive to the way we're using these tools. I can't put somebody in jail just because he's had one relapse of drinking. But I'm not going to let him know that. I'm going to be up there saying, "one more of these and you'll see what's going to happen". Sometimes that's all we need. If he does it again, what are we going to do? I hope I come up with something that is resourceful and clever. Because I'm certainly not going to put him in jail for the rest of his time. That doesn't make any sense at all. Because I think that's a Constitutional violation and an abuse of power (Yukon Territorial Court Judge 1998).

This Judge maintains that if the breach led to serious consequences, the outcome would be different. His response to the above situation might be to tighten the

⁴⁰ Hypothetically, an offender may be working with the Community Justice Committee in preparation for a peacemaking circle, and abiding by conditions. One condition may be to have no contact with his wife, the victim of his physical abuse. Keeping an offender from practicing his spirituality with his wife, by say, attending a sweat lodge ceremony, provided her attendance is her choice, or breaching him for the violation of no-contact would be counter-productive. Jailing him for this "breach" would be too reminiscent of historical practices of the justice system on First Nations peoples, not to mention, unconstitutional.

conditions, impose a curfew, or increase police monitoring. The ultimate objective is to ensure the rehabilitative potential of the offender is not abused, and taxpayers' money is not wasted in the process. Keeping the offender out of jail also encourages continual accountability in the community, which may not be present subsequent to a jail sentence. However, in the eyes of the public, the outcome is witnessed, and the judge's objectives are misunderstood. Victims, offenders, and community members often concentrate on the outcomes related to peacemaking circles, as opposed to the difficulties and productive benefits of participating in the process. If they do not perceive peacemaking circles to be serious alternatives, they may not approach them seriously.

The most recurring theme of this section is the need for widespread community involvement in community-based justice implementation, development, and processes. Many factors affect initial community support for peacemaking circles, such as community consultation, understanding, perceptions, values, information, inclusivity, fears of change, general indifference, apathy and the degree of health and functionality, or community capacity. These elements affect how much support community members have for, or how much resistance they exert against, an initiative, and thus, the extent of their involvement.

Some community members demonstrated a certain level of indifference toward community peacemaking circles, and appeared to lack support for healing initiatives. A lack of community consultation or understanding in the development of peacemaking circles in Prospect may have contributed to feelings of exclusion. In addition, fears of change, a lack of information, and community problems may have also affected

community members' desire to support or become more involved in peacemaking circles. These attributes may have increased community resistance to the development of community-based justice, which affected widespread community support and involvement.

While it may be difficult to amass support among community members for community-based justice, encouraging and sustaining a broad base of community involvement is an even greater challenge. Certain issues that affect community capacity, such as power imbalances, the availability of personnel and community-based resources, healthy leaders, and perceptions of the legitimacy and credibility of the Community Justice Committee can affect people's general desire to become involved.

Interest is often dependent on individual choice, which cannot be forced. Individual definitions of community and the extent to which shared interests exist, affects the desire to take responsibility. Individual interest to have a voice also affects whether individuals desire to have a role. The degree of, or desire for, connectedness, and individual desires to heal, will also affect the extent to which individuals desire involvement.

If certain values are not shared, and distinct factions exist within a community (e.g., between those who consume alcohol and those who do not, between First Nation community members and Euro-Canadians, between the "healed" and the "unhealthy", or between those who believe in the potential of holistic, restorative justice, and those who are content with the practice and ideology of retribution), community support for peacemaking circles may suffer. However, some of the causes of disunity (which fracture

community relations) are not specific to the community of Prospect, but simply due to, and magnified because of, the small nature of the community, such as gossip, structural power imbalances, and personal or family feuds.

Perceptions of leniency of community-based justice may be perpetuated if power-imbalances are manifested in circle processes, or if follow-up support for offenders is not conducted diligently. Community support for circle participants is not only necessary for follow-up, but support for the initiative is also potentially eroded if follow-up does not occur. It is inaccurate to assume that a lack of interest or involvement is simply due to a lack of information; however, a lack of information can be perpetuated if assumptions are not challenged through involvement.

**CHAPTER SIX:
THE INVOLVEMENT OF FEDERAL AND TERRITORIAL GOVERNMENTS AND
THE CRIMINAL JUSTICE SYSTEM: A NECESSITY AND A THREAT TO
COMMUNITY-BASED JUSTICE**

When we first started this community-based initiative, and we applied for funding to have a justice co-ordinator, the Territorial government more or less said, in the written agreement, “we’ll let you do community-based justice, as long as you do it our way, and everything will be OK”. And you think about that statement in itself; it’s a complete contradiction; it’s a misunderstanding; it’s like, *somebody doesn’t know what community means*. So, of course we say “No. We’ll do this ourselves”... (Prospect Community Justice Committee member 1998).

Government Funding for Community-based Justice: A Double-Edged Sword

System partnerships with communities are fraught with challenges. The most basic challenge for communities starting to take increased responsibility for justice and reassert control over their own destinies is funding. Control over financial resources is the source of power for governments, and the lack of funding is a main weakness of communities. The discrepancies affect all operational aspects of community justice, which ultimately include outcomes and public perceptions of its effectiveness.

As noted in the previous Chapter, follow-up of offenders who are fulfilling healing plans in the community is integral, both to the offender’s success, and to the victim’s and the community’s perceptions of fairness and safety. However, follow-up is a challenge when communities must bear the full responsibility in an environment of limited resources. “All communities must have the resources to monitor and carry out circle plans. A failure to do so undermines community support, justifies government

indifference, and ultimately saps the spirit and integrity of the circle” (Stuart 1997: 94).

Volunteers cannot be expected to participate in an equal partnership with the system if they do not have equal resources. Community members have immense potential to make a difference in the lives of young people, through cultural camps and community programming:

Our present community justice [committee], it looks at the child, and it looks at some of his good and bad qualities to find out what it is we can do to help this youth become a good productive citizen for his own community... When you take a child out of the community and put him into a youth home, he’s lost all the support from the community... It doesn’t help that child become more accustomed to what the community expects from him. If the First Nation were given money, we could offer more programs for less dollars. These cultural camps are very important to the First Nation... Probation officers are getting paid to do their job, and we’re relying on community volunteers to do the very same thing. Where’s the justice there? (Prospect Elder 1998).

Volunteer justice committees and community members cannot be relied upon to accomplish all the work that goes into ensuring offenders and victims receive the support and treatment they need to heal and address underlying issues. First and foremost, a lack of time is an issue; community members cannot be expected to earn a living, as well as carry out duties which were formerly the system’s responsibility free of charge. Having the desire to make a difference must not be taken advantage of, as burnout often results. In addition, too few community support workers exist, and those who do, for the most part, do not feel equipped with the skills to deal with anger management issues, sexual abuse, and physical abuse¹.

¹ Since community members have not been participating in public issues in an extensive way, the skills that make a democracy healthy are not as strong as they need to be, in communication, listening, or problem-solving (Yukon Territorial Court Judge 1998).

If we had the money, we could deal with the sexual abuse cases, the Mission School cases, the rapes, dig out the shit, because it's all just buried. In every community. The violence and the abuse. Mental abuse, physical abuse, sexual abuse, you name it. Everybody knows who's done it. Everybody's been involved in it; everybody's been affected by it. If it just comes out now, it's going to blow up. It's going to be chaos. Bringing people in from the outside is not the best thing; but we don't have time to train people to counsel. We need more people resources in the community (Prospect Community Justice Committee member 1998).

Governments need to invest in communities' personnel resources if community members are going to be taking on these responsibilities (Stevens 1994). If these needs are ignored, community healing and peacemaking circles will not accomplish their long-term healing objectives, and governments will be able to justify their refusal to fund an initiative that apparently "doesn't work"². Saving the system money is not the primary objective of community justice; however, if a by-product is cost-effectiveness, the money saved should, logically, be reallocated to communities. Unfortunately, it is not; instead, it is used to support other platforms which attract greater "political kudos" (Yukon Territorial Court Judge 1998)³.

While governments talk in terms of restorative justice, there's more talk than financial support. Very little money goes into prevention programs or community justice programs. Even the \$32 million as part of the young offender strategy; spread it around 12 jurisdictions and you end up with very little. Thirty-two million dollars would build a 25 person jail. The next penitentiary will cost hundreds of millions of dollars. When it comes to building jails, there's no shortage of money. When it comes to preventative programs, there's more talk than action. My concern is that if community justice isn't supported properly, ultimately, people will burn

² Conversely, if the criminal justice system were reliant on untrained volunteers, and had no access to resources/funding, it would have been disbanded long ago (Stuart 1996c).

³ Apparently, the same problem is happening in New Zealand, whereby the government is using FGCs to withdraw resources. Although the immediate response to conferencing resulted in the closure of many youth jails, many essential community resources were extracted as well: probations, supervising, treatment, and counselling. Youth Justice Co-ordinators complain that the funds are barely adequate to support the conference itself, let alone the additional resources required in the community to ensure a youth's and family's needs are addressed (Yukon Territorial Court Judge 1998).

out and die on the vine, and the program will disappear. Then the mainstream justice system will say, “told you so” and go back and build more jails and send more people to jail (Yukon Territorial Court Judge 1998).

Community-based treatment options are important elements in a holistic community justice approach; however, a lack of funding negatively affects the proliferation of community agencies. The reality of limited treatment options for the offender (e.g., if suspended sentences and a few probation conditions are the only alternatives to jail available) gives the impression that very little action is being taken in response to the offence (in Green 1998). This perpetuates community impressions that peacemaking circles are lenient, and an easy way out, which exacerbates resistance among community members.

Because we have such a lack of resources here, a lot of our resources come out of Whitehorse. And people from this community don't trust people from Whitehorse. So sentencing circles can only go so far as to what sentence to give a young person, and then it's up to the resources to carry out that. To oversee that. So if young people don't trust that, or if there aren't enough resources in the community to properly do the job, then I see that it could be looked upon as not addressing the situation and being too lenient (Prospect RCMP officer 1998).

In other restorative methods, such as Family Group Conferencing, the meeting is a “one-shot approach” whereby the immediate conflict is discussed, but very few underlying issues exist, or are addressed. Peacemaking circles in the north cannot afford to ignore the many underlying problems that plague families and generations (Yukon Territorial Court Judge 1998).

A kid who's clinically depressed will not be turned around by one visit to the psychiatrist. For a kid who has a history of abuse and other problems in the home or hasn't learned basic interpersonal skills at home, at age 17, one experience like this won't be an incredible experience that will turn him around completely. So it's very important in restorative justice that

other issues are addressed. Personal issues, dysfunctions, lack of skills, personal victimization, cognitive skills, parenting issues... We need to make sure that in the restorative justice model we don't forget about this and we make available resources to the home and individual to deal with those issues. Otherwise, we're not going to have any impact on re-offending (Yukon Territorial Court Judge 1998).

In addition to drug and alcohol treatment programs, an Elder believes that with more funding, the community could do much more for youth in conflict. Currently, funding for cultural camps for youth comes from a separate funding pot, which is directed through the First Nation. The potential of cultural camps to address youth conflict with the law is highly relevant and complementary to community-based justice processes. Without follow-up programs, a community-based sentencing process is little better than the current reactionary approach of the criminal justice system:

I think that the justice system as a whole needs to look at this to help the community provide more effective programs...you need follow-up programs. Sentencing is one thing; but if you don't have programs to help the youth, identify their problem and find alternatives to getting into trouble, then we're just using a band-aid approach to a festering problem. [Without programs], things will continue to stay that way. We shouldn't rely only on what alcohol and drug workers can do; what is it that we can do to help them? (Prospect Elder 1998).

The community of Prospect currently receives funding from the Territorial and Federal governments; however, this funding is only enough to cover the costs of a full-time co-ordinator⁴. The struggle for financial resources and continuous justification of their existence has the effect of taking away valuable time that could be spent on working

⁴ In 1998, the federal and territorial governments allocated funds to the Prospect Community Justice Committee in an amount which approximates half the cost of incarcerating one adult for one year. The latter approach is much less cost-effective and more destructive in outcome, yet the system continues to maintain its lack of financial commitment to community justice.

with offenders, victims, and furthering their own community's development (Prospect Community Justice Committee member 1998).

The Aboriginal Justice Directorate of the Department of Justice received a mandate in 1992 to consult with First Nations peoples to examine the possibilities for and fund community-based pilot projects. Renewed in 1996 as the Aboriginal Justice Strategy, First Nations communities were encouraged to engage in and develop their own community justice initiatives, with cost-shared funding assistance from both the federal and provincial/territorial governments (Linden and Clairmont 1998). Communities recognize that the short-term government agenda is inconsistent with a First Nation approach to addressing underlying dysfunctions and working toward developing effective community justice initiatives that take a generational approach to healing.

The Aboriginal Justice Strategy is outlined in a booklet⁵ that describes the criteria by which communities must abide, in order to receive funding from the federal and territorial governments. With preference given to communities working towards self-government, and in defining what restorative justice projects are, the government can control which and how communities may develop community-based justice initiatives. Arguably, overly formalizing what communities are interested in defining, according to their own needs, will affect Aboriginal autonomy and may stifle a community's interest in taking control of community issues.

⁵ Aboriginal Justice Directorate (1997). *Aboriginal Justice Programs Handbook*. Ottawa: Department of Justice Canada. Draft.

It is questionable whether the intention to share power with communities is genuine. A Yukon Territorial Court Judge is skeptical of the federal government's ability to relinquish its power and allow First Nations communities to take ownership of their own problems and construct models of justice most appropriate to their needs. He asserts that governments must not abuse their power, because reliance on funding creates a "tendency [for First Nations communities] to exert high compliance for agreement" (1998). When communities sign Contribution Agreements⁶ with governments in exchange for funding, they risk compromising their own vision:

... Whoever holds the purse strings controls the process somewhat. If it happens to be an agency that doesn't support, wholeheartedly, what we're doing, then they have the opportunity to debilitate the process. If we're dependent on that funding, which we are, right now... (Prospect Community Justice Committee member 1998).

The Prospect Community Justice Committee "agreed to so much in the proposals" and, in comparison, the amount granted by the Territorial Government was minimal (Prospect Community Justice Committee member 1998). Financial resources are a struggle to obtain; subsequently, when funding is granted, the Community Justice Committee struggles to maintain its identity as a community-based initiative. "Unless there's a way to give [professionals in the justice system] ownership of [a new initiative] fairly early on, they're going to marginalize it" (Yukon Territorial Court Judge 1998)⁷.

⁶ Communities must take efforts to avoid major compromise and co-optation when signing Contribution Agreements. In desperate attempts to obtain funding, communities may either cave to the government's demands, or abandon all attempts at community justice.

⁷ According to Stuart (1998), circles in Minnesota have not been met with debilitating system resistance, because "they have been exposed to the principles of restorative justice for years". However, it is also possible that resistance has not occurred because the adoption of circles has been mandated and driven by the state.

Achieving Legitimacy and Obtaining Support from the System: Resisting Paternalism and Co-optation

In the past decade, Yukon communities have started to re-assert their inherent powers. However, dominant-subordinate relationships have become normalized, and the quest to suddenly counteract extreme influences of the justice system poses a challenge. The community of Prospect is currently dealing with “the dominant society” (Prospect Community Justice Committee member 1998) which, historically, is very familiar to First Nations peoples. In addition to holding a “government knows best” paternal attitude about health, education, community problems, and state-centred justice, governments are “great at defining what [the] job description should be [of] a Community Justice Committee” (op cit). Justice professionals appear to have difficulty with relinquishing control over justice, and trusting community members to take care of what they know best: the problems of their own communities. Paternalistic attitudes and resistance to community justice among justice professionals persist, primarily because the “dominant culture” is based on inequality and status:

The place that they have, they've worked very hard to get to. And that's above other people. So if you come from a place of dominance and you start sawing the legs off your chair, there's gonna be some opposition....They're going to do whatever they can to keep us in our place. Which is below them. That's all part of the struggle I suppose...they just want to keep their job, but at whose expense? The community's expense (op cit).

There is the perceived threat among justice professionals that the more communities have control over justice, the less they will be needed as professionals, and the less they will be worth in the eyes of the public (op cit).

System support and sensitivity is integral to the continued existence of community initiatives. In the absence of any approval by the formal system, community justice will have a difficult time surviving (Yukon Territorial Court Judge 1998).

It's sad to think that what communities want to do needs that much support from the formal, established power or authorities which are there basically to serve communities, ironically. That those who are hired to serve communities have more power than the communities. And that they can completely contain what a community might do (op cit).

One Yukon Territorial Court Judge in particular is a strong believer in the value of partnerships between First Nations communities and the criminal justice system. He posits that "if Aboriginal peoples want to embrace the idea" (1998), collaboration with the system is useful. Organizational legitimacy in a political reality where First Nations peoples do not have sovereignty is easier to obtain for Aboriginal-operated initiatives that design approaches which are directly supervised and supported by the western system. For many communities, this is not an attractive option; however, the alternative, having full control, may come at the cost of system perceptions of legitimacy, and funding. "Achieving legitimacy will be an ongoing and possibly never-ending struggle for Native justice initiatives" (Nielsen 1996: 22).

It is a major challenge for community members to suddenly gain legitimacy from the system, which is necessary if the system is going to share its power over justice. Although members do not have experience working in the justice field, Prospect's Community Justice Committee⁸ is comprised of a former member of the clergy, a social worker, an alcohol and drug addiction program worker, a college instructor, a school

⁸ At the time the research was conducted.

principal, an RCMP officer, and a band office employee⁹. The fact that most members either form part of the “dominant” (and in some respects, oppressive) social structures of education, social welfare, and religion, or have experienced first hand the injustices of the criminal justice system, actually gives the Committee an advantage. Their respective professions and experience provides them with an informed understanding of the structures’ operations, and enables them to use their critical and analytical skills, based on insider knowledge, to resist co-optation from the system. While other Community Justice Committees may not have this advantage, they all have to tend with resistance from the players in the criminal justice system. And the fact remains that justice personnel are not eager to give up their power over justice, especially to “average” community members who simply have a passion to make a difference:

Unfortunately, the people who are doing this work out of desperation need to appear to know what they’re doing. Whether they do or not; they have to have that appearance. And so when someone from the community says, “let’s try this”, they say, “bah, what do you know? You didn’t even go to school. You don’t have the capability to make any decisions on your own behalf. We’ll do that for you”. Yeah, there’s resistance. But it’s changing (Prospect Community Justice Committee member 1998).

Equal Partnerships Between the Community and the System: Reality or Rhetoric?

Despite the resistance, the federal and territorial governments have a vested interest in community justice. The first advocates of community justice among justice personnel in the Yukon included two Territorial Court judges, whose interest in

⁹ This label is inaccurate in describing everything that this member espouses. He also fills roles such as spiritual leader, sweat lodge keeper, and Clan Leader for the First Nation, among other identities. His experience as a First Nations offender in the criminal justice system and former student resident of the Mission Schools enhances his participation as a member of the justice committee, for obvious reasons.

relinquishing power to communities was noble, genuine, and in the best interests of communities and the First Nations peoples. According to one Yukon Territorial Court Judge (1998), morally, the system can no longer afford to punish individuals for wrongdoing, since other social institutions have realized the ineffectiveness of retribution in attempting to encourage responsible behaviour. “You’re morally bankrupting societies by inducing people to believe in systems that respond to problems in a way that is contradictory to their personal values” (Yukon Territorial Court Judge 1998). Continuing to disregard the importance of community and system partnerships is perpetuating conflict at all levels, and discouraging communities’ efforts to conduct their own “moral work”, as well as address their own conflicts. Dealing with conflict helps to build community, and in denying communities the opportunity to engage in healthy methods of community development, the system contributes to further conflict. Crime is endemic to communities, and has become endemic to institutions. Essentially, there is a mutually beneficial relationship in system-community partnerships (op cit).

However, the larger system’s interest in community justice is not entirely consistent with the objectives of communities, or community justice proponents. When two interests and motivations clash, it is questionable whether a “true” partnership exists:

...I think the big motive on the government’s part is that they can see that this is gonna save them money. They’re starting to see that now...and if anything is gonna motivate a government, that is. There may be a few people with good hearts, and who really care, and who want to see a difference, but it’s gonna save them money. That’s what motivates them. The Whitehorse Correctional Centre is contaminated, condemned. What are they gonna do? Build another multi-million dollar jail? ...They’re also seeing that it’s money down the drain, because if they see the same person go 20 times in the past 20 years and spend 15 years in the jail, nothing’s changed. It’s like flushing money down the toilet. They’re thinking

strictly on a financial basis... so they're looking at alternatives (Prospect Community Justice Committee member 1998).

The drive behind "partnerships" for governments is related to two issues: spending less money, yet maintaining power. The system's desired relationship has been described as "teacher-student", with a "one-way flow of information" (Prospect Community Justice Committee member 1998). Because "partnerships" between the Canadian government and First Nations peoples have never been equal, or trustworthy, skepticism arises:

That's the challenge again, with partnerships. The government, the big buzz word, is "partnerships, partnerships". My response to that is, "we've always had them. You built the Mission Schools, we filled them up. You build the jails, we fill them up". That's our partnerships. Has been (Prospect Community Justice Committee member 1998).

Instead, the meaning of partnership for the Justice Committee is based on having equal say, equal resources, and equal leverage to make mistakes:

[T]hat's got to change to leap forward in the midst of change, where we can say, "what about this", and have them listen to us respectfully. Even though we are going to make mistakes, even though we are going to stumble, but where we have the partners to say, "well, you've got to let them stumble a bit, got to let them fall, they're gonna learn" (Prospect Community Justice Committee member 1998).

Prospect's justice committee has experienced pressure from the Territorial Government and the RCMP to become an add-on to larger system initiatives, such as community policing and Family Group Conferencing. Although the financial burden would be lessened, it would come at the cost of autonomy. They witnessed other communities jumping on the Family Group Conferencing bandwagon, because the RCMP offered to train and fund; however, they are aware that their decision-making powers and

the true nature of community justice would be severely compromised, co-opted, and once again, owned and controlled by outsiders, namely the criminal justice system.

In contrast to the interests espoused by two Yukon Territorial Court Judges, who support the communities' desire to conduct peacemaking circles, the RCMP has adopted Family Group Conferencing in the Yukon for reasons of its own which are, for some, transparent:

The police recognize that they're being broadly and widely discredited. Their notion of community policing is a fraud; it isn't *community* policing; it's policing in the communities *by the police*, as they see fit to have it. And they also see that there's a tremendous criticism growing in the communities about policing. So much so, that communities are aggressively pursuing their own police practices. So if you're a manager of this large company, and you see the customers are suddenly moving away from the product you're providing, you need to provide a product that the customers want. So now there are many out there – many which have different options and characteristics. What one did they pick? They picked the one they can control! Family Group Conferencing! There are different models of Family Group Conferences. In some, [the police are] not involved at all except as spectators. Then there's the Australian model, which gee, what a big surprise, happens to be controlled by police! Do you think that's a coincidence? Hardly! They had someone quite smart in the RCMP who sat down and said, "we've got to do something about communities. We've got to do something about our own image, in which we can partner with communities and give them some sense of responsibility". They said, "yeah we can do that, but we can't lose control, and it's got to be something that we pull the reigns on" (Yukon Territorial Court Judge 1998).

This perception is arguable, and it is perhaps inappropriate to assume that the RCMP only support restorative processes for reasons based on maintaining control. Some officers may genuinely perceive restorative justice as a vast improvement over the time-consuming, adversarial, punitive, context-avoiding practices of the criminal justice system, especially in First Nations communities.

However, the Prospect Community Justice Committee expresses perceptions of resistance applied by the Yukon Territorial Department of Justice and the RCMP. “We’re fighting so hard against [them]”...and “the system is so dead against community-based justice” (Prospect Community Justice Committee member 1998), for political and monetary reasons. While difficult for an outsider to describe, the relationship appears to be volatile and characteristic of a highly unbalanced power struggle: those with power are intent on keeping it, and those without (the community) are fighting an uphill battle. This is further complicated when a member of the RCMP also sits on the justice committee, which is, in and of itself, a positive example of the “partnership” sought. However, committee tasks may be seen as compromising the RCMP mandate of furthering Family Group Conferencing, or the punitive mandate of the criminal justice system.

This intra-Committee conflict of interest works both ways. Police roles and responsibilities may also work against community justice efforts. Efforts to work “with” offenders, as opposed to “against” them, are exemplary of the polarized methods of accomplishing justice, which distinguishes the community justice philosophy from the RCMP’s. This difficulty arises when the Community Justice Committee is working with an offender who breaches, or commits a minor offence. When RCMP officers arrest people who commit crimes (regardless of their involvement with the Committee), the Community Justice Committee’s efforts to work with the individual are suddenly cut off, and undermined by the criminal justice system¹⁰.

¹⁰ For example, if the justice committee is working with a youth offender in efforts to start him on a healthier path, police responsibilities to arrest and charge for the most minor of offences (such as a traffic violation), with the use of their discretion, may work against the youth's and the Community Justice Committee's larger concerted efforts to keep the youth out of trouble, and out of the system.

While the perception of legitimacy being granted by the criminal justice system is important, the involvement of the latter in peacemaking circles can be conceptually problematic. Although the inception of peacemaking circles involved the good intentions of judges to share power with communities, and community input is heard, the criminal justice system maintains control by having the Crown present in the circle to consider traditional sentencing principles and precedent, or national standards, and having the Judge impose the final sentencing decision.

[The purpose of peacemaking circles is] to sentence a person having regard to the input of the victim and their supporters and the accused and supporters and the community. To achieve a consensus which seems fair for all. In [Prospect], you have input of the community, victims, and accused. The remaining question is: do you have consensus? This is affected by the traditional judiciary system. So you're not really achieving just consensus, because it's tainted by the system. So I don't think it is truly just, because it's affected by external community input. I don't think a judge should be in the circle. I had never seen a circle with judges and lawyers until I came to Canada. In other countries, it's all community. We don't need a judge. We should leave it in their hands. For a judge to impose jail, even when the community said no, doesn't make sense. Why do we need a rubber stamp? (Whitehorse Crown attorney 1998).

Arguably, the rhetoric inherent in this method of "sharing power" may simply be another attempt to maintain the power that is perceived to be threatened. The fact that judges and court officials sport their courtroom attire in the circle may also be problematic, as it represents a visual reminder that system officials and the hierarchy are omnipresent, despite efforts to prove otherwise.

Due to a reliance on court officials, and the post-charge nature of peacemaking circles, circles must wait for circuit court, which occurs every two months. In a close-knit community, during the wait for resolution, discussions can occur that may not be positive,

or productive. Thus, attempts at resolution may become more difficult, or possibilities disabled. As a result, divisions may be perpetuated or created in the community, which may escalate conflict, and prevent reconciliation that may have otherwise happened.

The participation of justice system personnel in community court peacemaking circles is particularly problematic if the interests of system personnel are not as strong as community members'. Because peacemaking circles take as much time as is needed to hear all voices and agree on resolution, prosecutors, lawyers and judges may not all be willing to invest sustained amounts of time in one peacemaking circle hearing. Many system personnel assume that the time commitment, and the costs associated with paying lawyers, Crown counsel, court recorders, clerks, and judges to partake in what can amount to a five to ten hour sentencing hearing far surpasses the time required and costs associated with sentences carried out in a courtroom (op cit)¹¹. Considering the personal nature of some of the issues discussed, and the objective of encouraging communities to address them, system personnel do not need to be present; in fact, circles among community members could be conducted in advance, and recommendations presented to the judge (Whitehorse defence lawyer 1998).

“...[I]t’s not failure that kills these programs. It’s simply the lack of sensitivity and support from the larger system” (Yukon Territorial Court Judge 1998). In addition to the involvement of two of Yukon’s Territorial Court Judges, a couple of Whitehorse

¹¹ According to a Yukon Territorial Court Judge (1998), the time required to conduct a peacemaking circle is a fraction of the amount of time of a regular court hearing. He argues that much more work is undertaken with an offender before a peacemaking circle than a court hearing, which means that many adjournments are avoided. The fact that an offender must admit responsibility (enter a guilty plea) before acceptance into a peacemaking circle also prevents time-consuming trials. If an offender makes a commitment to change (which is also required before a circle), the amount of time saved in court (in terms of prevention from future criminal and system involvement) is incalculably high.

Crown counsel and defence lawyers¹² have also been very supportive of community-based justice. However, restorative and community justice philosophies are completely distinct from the guiding principles of the system; thus, for the majority of legally trained professionals, community justice is a foreign concept.

Some system supporters may have no intention of broadening their philosophical horizons, yet participate in community-based justice. In one peacemaking circle hearing, Crown counsel was primarily concerned with upholding traditional sentencing objectives of deterrence, denunciation, proportionality, and punishment. Instead of considering what might be productive for the offender, the Crown took a “pigeon-hole approach” (Whitehorse defence lawyer 1998), and focused on creating a community-based sentence, fraught with numerous conditions that served the sole purpose of freedom interference. Knowing the probability of incarceration for the offender was very low, the Crown asked for a restitution order in an amount that ignored the offender’s ability to pay. During the peacemaking circle, the Crown showed “boredom, disrespect, and impatience”; yet, the Crown was one of very few people (out of a total of forty) who was getting paid (op cit). System representatives must have a desire to work with communities before they agree to be involved in community-based peacemaking circles; otherwise, nothing has changed; offender, victim and community needs are ignored, the system maintains control, and neither the credibility of the justice system, nor community justice, has improved.

¹² Although largely based in Whitehorse, Crown attorneys and defence lawyers travel on circuit to the individual communities, and thus play a continued role in community court peacemaking circles.

According to one Territorial Court Judge, a professional's level of support for community justice is dependent on his or her confidence in the system, or realization that new methods are required:

The big thing for a professional, whether a Crown, defence, or judge, is stepping back and giving up control....In community justice, you have to play a secondary or tertiary role. You have to step back and let the community take responsibility. You might even feel uncomfortable about it. Unless they're doing something way out of line that is really harmful, you keep your mouth shut. Tough for people who have been legally trained to do that. Because their training is to occupy the space and to control... what I recognized early on, is that we're really doing a shitty job in the formal justice system. If your focus is making people and communities better, you're more willing to step back and give up control. So as a judge, if you think formal court is the best thing, or that your opinion is the best thing, likely you're not a judge who should be doing community justice.... (Yukon Territorial Court Judge 1998).

A defence lawyer, who is one of the few lawyers in the Yukon supportive of community justice because of his experience in circles as Crown counsel, believes that the lack of support on the part of many lawyers is, in part, due to the fact that their roles and responsibilities are not only changed, but reduced in peacemaking circles:

They don't view it as real "lawyering", because it's not *their* performance, it's not doing the traditional lawyer thing, polishing your client up, polishing your speech up and making everything nice and formal. It's asking a lot of hard questions, and getting more people involved, and more importantly, it's shifting the focus away from the formal actors in the system, like the lawyers, the judges, the probation officers, and shifting the focus back to the root causes of crime, that is, the setting in which this person lives, so that we can say, "what can we change in this person's daily life that will turn them away from the criminal activity?" (Whitehorse defence lawyer 1998).

In an interview with the researcher, this defence lawyer recalled the obstacles he encountered as a Crown counsel suddenly playing a role in community court peacemaking circles. As community members were accustomed to witnessing the Crown

sending their community members to jail, it took time before they realized his role had changed, as did his methods; however, his intent was similar to theirs. When community members were asked what they could do to keep someone out of the system, and recognized that he was interested in considering alternatives, attitudes toward him changed, and a real working partnership developed. His rationale for supporting the change in method was that his objectives had not really changed much at all: as Crown, he was present to ensure the protection of the community by addressing social issues (Whitehorse defence lawyer 1998).

The debate began to focus on discovering ways of collectively meeting common interests towards rehabilitating the offender, encouraging accountability, and protecting the larger public safety (Yukon Territorial Court Judge 1998). If community members were prepared to address those issues, he was prepared to encourage it. He realized that community members and system representatives like himself were attempting to accomplish the same objectives (Whitehorse defence lawyer 1998).

There were a lot of people who felt that reluctance to listen to me. But when they actually listened to me, and I asked them to listen to me, I kept saying, "I'm not asking that he be taken away from the community. I'm asking you, as a community, to take him into you". That's opposite to what they thought I was saying. I told them, "I need him to be healthy, because if he's healthy, your people are safe. And that's the concern here" (Whitehorse defence lawyer 1998).

Unfortunately, not all Crown counsel are as informed about community needs, as willing to part with traditional system sentencing principles, or as interested in relinquishing control. Justice personnel will be continually met with resistance from community members, because of the labels the former have acquired, based on past

experience. “When the system is involved in anything, they screw it up. Too much politics and power in one area” (White Cloud 1998). Overcoming this obstacle begins with the justice professionals themselves. They must understand community dynamics and needs, and desire to be a part of the process. If they do, increased understanding about communities among system people develops, and true partnerships can be formed; if they do not, adversarial friction continues. In order for circles to work with system involvement, trust must be established, and community members must perceive community justice to be entirely separate from the system.

Subsequent to the first sentencing circle in Mayo in 1992, the presiding Yukon Territorial Court Judge was confronted with opposition from the RCMP. Because the offence involved the attempt of assault on a police officer during arrest, members of the RCMP “thought that not putting Philip Moses¹³ in jail was an affront to the force and to them individually. They saw it as an easy way for offenders to get out” (Yukon Territorial Court Judge 1998). According to one Territorial Court Judge, their lack of support was due to the perceived disrespect of their position, attitudes about justice inherent in police subculture, and the fact that they never participated in a circle themselves (op cit).

While difficulties in the involvement of justice professionals have been experienced, positive partnerships have also been shared, and are noted to be essential to successful community-based justice. Their presence has been appreciated to such an extent that the mobility of certain community justice-supportive system players can be

¹³ R. v. Moses (1992) 11 C.R. (4th) 357 (Yukon Territorial Court).

problematic to initiatives, and discouraging for the people who have worked on gaining their support and co-operation. RCMP officers are transferred every two to three years, and their replacements may be retributive believers with no interest in community-based justice philosophy or practice (Yukon Territorial Court Judge 1998). Trust that may have been established between community members and a system representative is suddenly destroyed, and the efforts must begin anew, with no guarantees.

Widening the Net of Social Control: An Unintended Consequence?

In order for “community justice” to be a truly community-owned and operated initiative, the federal government must relinquish its power to the community. The issue of the types of cases appropriate for a circle sentence is debatable among and between criminal justice system professionals, and the federal government.

Communities deal with more serious offences, because the justice system says, “Well, maybe you can do something that we can’t. You’re committed to try and do something”. If we knew that sending a person to jail was going to solve the problem, we would. I think the community can deal with it, 90 percent of the time. I think the “true power” is with the community, not the mainstream system (Whitehorse Crown counsel 1998).

However, government officials who do not work with communities and have not experienced their “true power”, are hesitant to “allow” communities to take on more serious cases. In reality, the government views restorative justice as another method of accomplishing diversion, which was formalized in 1996 by passing Bill C-41 (conditional sentencing). Originally instituted to provide judges with the option of sentencing offenders to community-based alternatives to incarceration, statistics show that, despite the provision, incarceration rates have not decreased as a whole (Canadian Centre for

Justice Statistics 1999). The following quotation indicates that the government still believes it gives communities power, and provides opportunities to communities by diverting cases to them.

...[Bill C-41] set out the regime for diverting cases to communities. So that's giving them power; what it is is providing the opportunity for communities to take on some of these responsibilities. So that's ultimately good as far as I can see (federal government official 1997).

In essence, the dominant-subordinate relationship still exists, and the government's implicit objective in supporting community-based alternatives is to increase the strength and size of the system's net of social control (Cohen 1985).

The fact that applications for peacemaking circles must be accepted by a Territorial Court Judge can also be restrictive. Many peacemaking circle proponents would argue that only four elements must be present: both acceptance of responsibility and motivation on the part of the offender; community resources; and support (Whitehorse defence lawyer 1998). However, some criminal justice system personnel and politicians argue that only property crimes and non-violent offences should be accepted; in reality, circles have accepted offenders of robbery, assault, and domestic violence, based on the above criteria¹⁴ (see Appendix G). A Territorial Court Judge (1998) recognizes that the choice is the community's; however, the courts can still deny an application to sentence an offender in the circle:

¹⁴ Conditional sentences (an amendment to the Criminal Code in 1996) are designated only for offenders who would otherwise receive a jail term of two years less a day. However, an armed robbery case (which would normally yield federal time) was sentenced in a circle in 1998, and the offender was given a conditional sentence, and time served. Conditional sentences are often used when sentencing an offender in the circle. See Appendix G for three local media clippings (one article, two cartoons) surrounding this high profile case, that communicate the political opposition to sentencing circles in the Yukon. Controversy was due mainly to perceptions of leniency, the seriousness of the case sentenced, and the fact that media reporting of the details of circles was prohibited (to respect the confidentiality of the circle).

It's up to the community. But we have a check on that. They decide what goes in. If the Crown or police think it's a mistake, then they bring it to the court. And they put their reasons before the court, and every time they've done that, the community has been able to meet most of their concerns. I can only remember one or two cases in which after hearing from the Crown's opposition and the community that I said, "no, this is a proper case for the circle". First of all, they don't oppose very many, and those they do oppose, most of those get resolved by the community putting into the mix the kinds of conditions that will ensure nothing will go wrong (Yukon Territorial Court Judge 1998).

The extent to which a community is in control of its own initiative impacts largely on the effectiveness of the model in addressing the needs of the offender, the victim, and the community. The community must have the power to decide which offences it has the desire, and the capacity, with which to deal. Community thresholds are different. Some First Nations communities have proven that crimes such as sexual assault and incest can be dealt with in community justice processes¹⁵. Others would disagree, because of their professional training and western views of justice. As one federal government official explained in an interview,

...Sexual assaults, sex offenders, you're dealing with much more deeply-rooted problems that need a clinical and trained psychological approach. These are not normally available or delivered by lay people in the community. So they would probably want to exclude programs which have a high treatment component to them. And I also think that there is some sort of sense of legal obligation that is associated with serious offences, that people believe you not only make amends to the victim through restitution, and *you don't just try to heal the offender, you have an element of punishment there as well. That sense of justice has to be dealt with through periods of incarceration for more serious offences* (1997).

¹⁵ See Warhaft (1998) and Ross (1996) for descriptions of community-based justice/healing initiatives in British Columbia and Manitoba, respectively.

Assuming the need for punishment, and imposing the government's agenda on an otherwise community-based healing initiative is, arguably, in direct opposition to a restorative or transformative agenda.

It follows from the values espoused in peacemaking theory, that the resolution of conflict between consenting parties is a paramount objective over whether a case is otherwise prosecutable in a court of law (Pepinsky 1991). Similarly, a Territorial Court Judge distinguishes between net widening as a negative result of "diversion", and early intervention and restoration, which are positive outcomes of restorative justice processes:

Net widening is another issue...if you're just talking about diversion, then clearly you don't want to process more kids...where you can rightly say that diversion is the objective, and you're processing more kids, then you're defeating the purpose. But when we're dealing with restorative justice, I'm not sure the same principle applies. Why shouldn't we process more kids in the restorative justice process, if the objective is not to divert, but to restore the harm that was done? Even if, in the formal justice system...a charge might not have been laid...because of a different focus, there's no reason why these can't be considered legitimate cases...it's a real opportunity to provide some earlier intervention and some earlier learning on the part of the young person. And that's a good thing. *If it's used that way* (Yukon Territorial Court Judge 1998).

If restorative justice is applied as "diversion", and it processes more offenders than the criminal justice system otherwise would have, it is not serving its original purpose.

Some analysts recognize the threat of co-optation of the restorative justice movement, and suggest three discouraging outcomes (Minor and Morrison 1996). First, in striving to gradually substitute restorative justice initiatives for retributive correctional practices, progress may be hindered by resistance from the established political and correctional infrastructures. State control over deviance is an integral feature of modern capitalism and is not likely to be relinquished. Second, allowing restorative programs to

be legislated by the state implies that the state decides which cases are appropriate for restorative interventions. Undoubtedly, restorative justice is likely to be relegated to dealing with only less serious offences. Third, in attempting to incorporate restorative practices into the existing bureaucracy and state-sponsored correctional interventions, goal displacement is likely to occur. The compassion and understanding among victim, offender, and other concerned parties that is desirable in restorative justice models will likely not be given top priority in a setting that makes them subservient to bureaucratic priorities, such as cost reduction.

Fiscal objectives are likely to override true restorative justice goals, which may have devastating consequences when evaluations are constructed and imposed by the state (Minor and Morrison 1996). This is apparent in the words of a Yukon Department of Justice representative, who is in agreement with the importance of communities developing projects according to their specific needs. However, in her view, conflict may present itself when territorial funders impose their interests on community project evaluations:

You need checks and balances. If we just let people come in, and gave them whatever they wanted, and if a community said to the government, "this is what we want" and if we just gave them the money for it, we couldn't go back and check to make sure they're running the program properly, like keeping files and statistics. If we ever wanted to go back and conduct an evaluation on how well a project is running, and if we don't have those checks and balances in place, how can we say the program's going to be effective? We need to put those into place. Every community that has submitted a proposal, we haven't re-written it or told them to change anything, unless there were really significant parts that we didn't agree with, or because we felt they couldn't do it because it was in conflict with some of the government's roles (Territorial government policy analyst 1998).

In asking communities to submit proposals in the first place, the government is exerting its control over community-based justice. The Territorial government policy analyst stated that the government's agenda in supporting community-based justice is mainly monetary: in keeping people out of the system, the system saves money. "The reduction in numbers; the reduction in court time; the reduction in the amount of people who are going to jail; the reduction in the amount of people they have to provide legal aid for; and the reduction in the number of young offenders" (op cit 1998). While communities' interests in "re-establishing a structure" are recognized, it is potentially problematic if the "effectiveness" of a community's initiative is judged mainly on the government objective of fiscal restraint.

Some government officials believe that "the philosophies of sentencing now are supportive of restorative justice 'notions'" (federal government official 1997), and that the system need not alter its thinking, objectives, or practices in order to conform to a completely different restorative philosophy:

I think that restorative *notions* have been in incubation for almost 20 years. Why more prevalent now? If I were a bit cynical, I'd refer to the greater needs to find alternatives, simply because of the *costs* associated with incarcerating people and processing them through court systems. We went through sentencing reform initiatives, and we've introduced restorative justice *concepts* in the principles that are to govern sentencing, and may include community involvement, rehabilitation of the offender, or making restitution to victims. Those are all *concepts* that are associated with restorative justice, but because they are now in the Criminal Code, it seems to me that *they are now objectives which the mainstream system now shares...* It's a diversion initiative...and there are diversion programs going on right now under the Young Offenders Act...they probably never thought at the time that they were *restorative justice*; it wasn't a term that was factored in the design and development of the program (federal government official 1997).

This implies that the government may not have the intention of revamping its retributive philosophy and adopt a more healing-oriented, restorative approach. A new label may simply be applied to old practice. Using the term “restorative justice” synonymously with diversion is problematic. A whole new set of skills, rather than simply a new vocabulary, is required in order for restorative justice to work as it was originally intended (Yukon Territorial Court Judge 1997).

Controltalk (Cohen 1985: 273), or political language, is used as a further function of social control. By masking existing justice practices under the new language of restorative justice, the system “allows indefensible forms of control to look more defensible” (op cit). The change that occurs becomes linguistic, and superficial. This facilitates greater control in that it obscures reality and power relations and how they are imposed (op cit). It can be argued that the criminal justice system has very little capacity for, or interest in, philosophical change. Reorganization may only occur on a superficial level, so that the system is not working against its own interests.

The Prospect Community Justice Committee holds equality as one of its main principles of practice, and asserts that state power over justice and other community social institutions is not an “ingredient for a safe, healthy community” (Prospect Community Justice Committee member 1998). Reasserting power and taking responsibility at the community level, and sharing control over justice are. The Justice Committee prides itself on offering people a choice and the responsibility to take control of their own issues, instead of relying on “the dominant society” (op cit). This evident difference in philosophy between the justice system’s and the community’s ideals of

justice is problematic when the system attempts to control community justice. “Our way is giving. Our way is helping whenever we can. Our way is forgiving” (op cit). The First Nation ethic of “waiting until you are asked” is also fundamental to the Justice Committee’s method of dealing with circle participants, but is the opposite ethic practiced by the criminal justice system, in their dealings with communities and individual offenders.

However, some words inherent in the restorative justice philosophy will never be used by most government officials, because of the unmistakable spiritual connotation within which they are embedded. Arguably, healing, reconciliation, and forgiveness are words which have no place in a retributive system of justice. The re-education of system people on words and concepts such as “justice”, “equality”, “fairness”, “partnerships” and the re-introduction of words such as “forgiveness” and other values consistent with restorative justice are required, so that government involvement is not based on a rhetorical attempt to share power with communities (Ross 1996).

On the other hand, concepts such as “restoration” or “community” are sufficiently ambiguous to disguise old practices within previously under-used terms. The destructuring ideology of “diversion”, as referred to by governments, “and their implied or actual preferences (i.e., community control)...are sustained by, and owe their public appeal to, the rhetorical quest for community” (Cohen 1985: 116). The surface ideal is to replace the traditional mode of control (i.e., incarceration) with control in the community. The notion of “community” lacks any negative connotations, and its mythical qualities are

profound. In government rhetoric, the iconography of the small rural village is idealized, and refers to

A sense of belonging, shared values and rules, commitment to the group, mutual aid, intimacy and stability. In community lay all that was the opposite of alienation, estrangement, rootlessness, loss of attachment, disintegration of the social bond. These were the products of the city, of mass society, technology, industrialism, and the state itself (Cohen 1985: 119).

In reality, it is very unlikely that the same interests and forces which destroyed the traditional community – bureaucracy, professionalism, centralization of control – can now be used to reverse the process (op cit). The state capitalizes on and attempts to compensate for the weakened bonds and internal structures of First Nations communities today by imposing external controls. Thus, the government’s illusory attempt to return power to the community (and relinquish some of its own power) is an obvious paradox. In reality, the “rhetoric of destructuring” (Cohen 1985: 124) is, in fact, used to justify the re-instatement of government control.

The end result of the government controlling community initiatives is that communities will not have control; instead, the state will continue to have control of the communities (Cohen 1985). The original purpose of restorative justice (regaining power at the community level to address community-specific problems and social issues) may instead subject the community to increased amounts of state control. In invading community initiatives, the government “proletarianizes” First Nations communities, and “politicizes private space” (Cohen 1985: 137). First Nations are continually taught that “they cannot provide for their own or their children’s needs without the advice and scrutiny of the trained expert” (op cit). The government’s involvement in First Nations

community justice initiatives will perpetuate the dependency of the latter on the former for funding, which further increases state control (op cit). The state remains the only legitimate form of authority and grows, rather than contracts, by “delegation and devolution” (op cit: 139). These eventual realities are not at all consistent with the ideal of the state sharing power and exercising minimal intervention. The combination of the government’s desire to control the agenda, and the system’s desire to protect turf, marginalizes restorative and community-based justice to an attachment to the current system.

Although the interest of the government is fiscal responsibility and re-election based on that agenda promise, they must also respond to communities when they urge government to restore and respect their autonomy. As one Prospect Community Justice Committee member put it,

“Give us back our lives”, “give us back our power”, “give us back responsibility”. The communities seem naturally to be developing in that way. So [politicians] have to respond to it, or they don’t get elected. That’s probably the bottom line. But there’s a movement going on right now; much bigger than any human being; and it says, “give the communities back its spirit of independence, of capabilities”. ... They’ve put ceremonies into the jail. You know, my brother and I were going in doing the sweat lodge ceremony in the jail. Well, it wasn’t that long ago that it was against the law. They put people in jail for doing that kind of stuff. Now, they’re putting the ceremonies in the jail to keep people out. So I say that as an example to what’s happening with the First Nations people, with communities. It’s time to get rid of the dominant structure. Out with it. It’s had its day. Its day is done (Prospect Community Justice Committee member 1998).

Communities have their own interests, which appear to offset the threat of government co-optation. Some believe that the “dominant structure” of government has “had its day”, and anyone who continues to feed into its power is “feeding a dying beast”

(Prospect Community Justice Committee member 1998). The First Nation is working on land claims and sees self-government as an eventual reality, which provides much needed incentive and hope for the future. The motivation behind this movement is also fueled by communities taking control of their own issues. The First Nation's leadership is tired of its people being treated as the federal government's "babies" (op cit), and believes that the community can do a much better job of governing itself (Prospect First Nation Chief 1998).

Community members who are accustomed to relying on the justice system and other social institutions to solve their problems also require re-education in common concepts. Equal partnerships between the community and the system must begin with partnerships among community members. Working toward self-government requires that community members re-learn how to live together, which yields self-determination as a people (Prospect Community Justice Committee member 1998). The Justice Committee recognizes that the community's members must be willing and able to work together to eventually achieve self-government; and community justice is one step in this direction. "It's a holistic approach, not a bureaucratic one, not a government one, where we all start to live like a community again; we've been taught to be dependent, and now we have to become dependent on each other" (Prospect Community Justice Committee member 1998).

The other thing, too, is that we're stuck on whether we have resources. [That is] another challenge that we need to break away from, so that we're not dependent on government hand outs for the future of our young people (Prospect Community Justice Committee member 1998).

A member of the Justice Committee often speaks of the challenges of funding for community justice. However, he recognizes that the funding is not going to come from the outside. He asserts that the wealth for the youth and the community to draw upon is out on the land, and within traditional culture, but the challenge is to recognize that it is not going to come from the outside, and it is not based in monetary value, but traditional values (1998).

While funding is an issue for Prospect, the Community Justice Committee is confident that the same motivation and commitment that fueled its existence will ensure it continues.

We initially set out because we started first to help a few people who were in trouble, and realized that it's in the best interests of the community and the family of the people who got in trouble get some help. As we pursued that, we realized the whole community, in the best interests of the future generations, need to get back on the right track, become healthier as a community. So that is our value, and that is why people are investing their time into it. So if the government should decide not to fund any more of our efforts, that same group of people, which is growing, is still going to dedicate, in whatever way they can, their time toward a healthier community for the best interests of our future generations. That's not going to stop, and that's not regulated by funding. What funding can do is promote that, move it along, it can help out; it can shorten the time between getting from where we're at to where we'd like to be. The people are moved by their hearts, and that dedication will not change, no matter what. Regardless of what resources are or are not available, I believe (op cit).

The systemic challenges with which the Community Justice Committee is confronted are debilitating, but the larger community movement is empowering:

So then you become a part of this wonderful change. And you have all the power behind you, of whatever it is that's motivating people to do that. You have that available to you. So that you don't have to worry about whether it's gonna work or not... Because you know in this momentum of change to equality that we're gonna get there... [The other communities]

have to go through their own struggle. They have to go through their own lessons if YTG, RCMP, federal government comes in and says, “this is how we want you to do things. This is the best way to do it”. They may try it. But it ain’t gonna last long, because somebody there is gonna realize, “hey, we’re back to the same to the same old thing again. We’re feeding the dying beast again”. And so you can take some strength and encouragement from that. *So we should be encouraged by our difficulties, we should be encouraged by our challenges, we should be encouraged by our mistakes. Because if we know that there is something wonderful happening around the world, across the nation, throughout the north, then we should take some sense of security that we’re a part of that too* (Prospect Community Justice Committee member 1998).

The Prospect Community Justice Committee appears to understand the many systemic challenges confronting its development and continued existence. However, securing funding from the Territorial and Federal governments, and obtaining legitimacy and support, while resisting paternalism and co-optation, and developing equal partnerships with the criminal justice system, appear to be contradictory endeavours for the Prospect Community Justice Committee.

While the Prospect Community Justice Committee appears to be firmly grounded in transformative principles and does not appear to be at risk of being co-opted by the criminal justice system, its energy and efforts spent on developing balanced partnerships may come at the expense of community development efforts. Efforts to engender the support and widespread involvement of the community, and build community capacity to address crime and conflict may reduce the need for, and dependency on, the criminal justice system. System involvement and challenges may threaten the very existence of community-based justice, and while both the criminal

justice system and the community have a stake in the success of community justice for different reasons, it is unclear how both may co-exist in an equal partnership.

**CHAPTER SEVEN:
CONCLUSION: FUTURE DIRECTIONS FOR THE COMMUNITY, RESEARCH,
AND POLICY**

Communities interested in developing and implementing community court peacemaking circles as responses to crime are presented with many individual, community, and system level challenges. This thesis research adds to the limited Canadian literature examining such challenges that can impede the development, and inhibit the success, of community-based justice. The thesis also categorizes the challenges of implementation and practice into multi-levelled manifestations and responsibilities, as they appeared in the community of Prospect. As a broad case study, it has explored these interconnected issues, and recognized that they have the potential to threaten the credibility and sustainability of the peacemaking circle initiative. If left unaddressed, these issues would likely render a program evaluation invalid, and on the surface, paint a less than positive picture of success.

This thesis is the only study to date that has documented the dynamics of a specific community's peacemaking circle initiative, in the Yukon Territory. The bulk of the material on Yukon sentencing and peacemaking circles has been written from the perspectives of criminal justice system reformers or Department of Justice personnel. Previous literature has identified some of the elements presented in this thesis, such as the necessity of community consultation, balanced partnerships with the criminal justice system, participation and involvement of community members, financial and personnel resources, pre-circle preparation and post-circle follow-up, and the problem of power

imbalances. However, the interconnectivity of these elements, and other challenges, have rarely been discussed, particularly in a community context.

Although some analysts have claimed that sentencing circles in the Yukon were used largely to deal with young offenders (LaPrairie 1995), it became obvious through the experiences in Prospect that the opposite is true. The voices of young people and the experiences of young offenders in peacemaking circles have been missing from previous literature; this thesis shares some of the views and challenges from a young person's perspective. Contrary to the impressions given in other literature, and despite their high profile on the national and international scenes, peacemaking and sentencing circles in the Yukon are not often used to sentence offenders.

The following three sections summarize the issues discussed in the research. In essence, each level challenges the potential success or sustainability of peacemaking circles, due to perceptions, readiness, power, and involvement. Several options have presented themselves as extensions of the voices of community members. These warrant attention by and discussion among the First Nation, the Prospect Community Justice Committee, and community members.

Young People as Leaders of the Future: The Necessity of their Involvement in Community Development and the Desire to Change Themselves

The practice of and philosophy underlying community court peacemaking circles have immense potential to address youth crime through community building, but it would be useful if the community's youth were involved in this quest. Young people expressed feelings of marginalization, a lack of community connection, a desire to escape from the community, frustration with the social, educational, recreational, and employment

problems facing their community, mixed opinions regarding the potential of community court peacemaking circles, and varying levels of understanding of and support for the objectives of community-based justice. Despite their criticisms, their energy is not yet destroyed by apathy, and they are thus not yet a lost resource.

Instead of marginalizing or blaming young people for the symptoms of community problems, an alternative course of action could be to involve youth in community youth development. This may further their active participation in addressing the issues that contribute to offending behaviour. Partnering with adults who support and care about youth and their future fosters positive connections, and provides role modelling to growing youth. This approach enables young people to develop a greater sense of confidence, self-worth, usefulness, belonging, connectedness, empowerment, and hope for the future. It also renders them more likely to further the health and functionality of their community and future generations, and less apt to engage in behaviours that threaten their community's well being.

A young person's degree of connectedness to their community affects crime and peacemaking circles in various ways. The degree of connectedness felt by youth affects their perceptions of the ease of participating in circles, which impacts circle processes and outcomes. Peacemaking circles can also contribute to the connectedness of young people to their communities, through social support networks.

Young offenders who had experienced peacemaking circles demonstrated a misunderstanding of the objectives of peacemaking circles, and although they learned of the benefits of circles through experience, initially participated to avoid incarceration. Specific challenges to the success of peacemaking circles on the individual level included

the possibility that young offenders may not be ready to make positive changes in their lives, the fact that many perceived community-based justice processes and outcomes to be easier than they were, and the inconsistency between their reasons for participating and peacemaking circle objectives.

However, the fact that all youth took full responsibility for their perceived success (or failure) of the circle suggests that an individual's desire or readiness to change is a necessary precondition to participation that cannot be altered by even the most developed community-based justice process. These findings suggest that while greater knowledge of the objectives and increased preparation of circles may be helpful, individual desire to succeed may be one of the largest determinants of the success of a circle. If offenders are not ready to change, or not cognizant of the fact that circles are not primarily designed to keep them out of jail, the reality or perceptions of failure may not encourage them or other community members to participate in the process in the future.

Community Support, Widespread Involvement, Community Capacity and Healing

Ironically, the Prospect Community Justice Committee may be confronted with what appears to be a circular problem regarding community support of peacemaking circles. Many of Prospect's community members do not participate in community peacemaking circles, do not have a full understanding of their objectives, and hence, do not support community-based justice. Community Justice Committee members and peacemaking circle proponents believe that skepticism arises from not having participated in a peacemaking circle; however, a lack of participation is only a symptom of the larger underlying problem of a lack of support and desire for involvement.

While the Prospect Community Justice Committee may be a committed and representative group of community leaders, the success of community justice is dependent on widespread community involvement in implementation and development. Many factors affect initial community support for peacemaking circles, such as community consultation, education, understanding, feelings of inclusion, values, apathy, community health and functionality, and fears of change. These elements affect how much support community members have for, or how much resistance they exert against, an initiative, and thus, the extent of their involvement.

While some community members may be initially supportive of the concept of community-based justice, encouraging and sustaining a broad base of community involvement is an even greater challenge. Individual choice, responsibilities, definitions of “community”, feelings of connectedness, and interests in justice or having a “voice” also affect community members’ desires to be involved in community-based justice. Some causes of disunity in communities, although common to many small communities in general, may be detrimental to concerted efforts at community justice. It appears as though the perceived legitimacy of the Community Justice Committee, perceptions of the potential or effectiveness of community peacemaking circles, and community readiness and capacity to address social issues and resolve conflicts are important factors affecting widespread community involvement.

The perceptions of community members are integral to the success of a peacemaking circle initiative. If community members perceive peacemaking circles to be an easy option for offenders, and a lenient alternative to the criminal justice system, they may not perceive them to be in the best interests of the community, and may thus not

have the desire to participate and contribute. The result is a community-based initiative that does not have widespread community support and cannot, therefore, fulfill some of its most important objectives. Perceptions of leniency of community-based justice may be perpetuated if community capacity is not developed, or if an initiative does not have widespread support and involvement. A lack of support can perpetuate misinformation and the lack of involvement.

Victims who had participated in circles as survivors of domestic abuse voiced general dissatisfaction with the process and the outcomes of their experience, because they felt unprepared, power imbalances in the circle were unaddressed, they perceived that their voices were not heard, and the offender's and their own healing needs were not perceived to be fulfilled. These issues are also related to community capacity.

The extent to which the community has the capacity to take responsibility for justice issues needs further exploration. Power imbalances, the availability of personnel and community-based resources, community readiness, and the presence of healthy leaders are important indicators of capacity. Communities with unhealthy power imbalances and hidden issues might begin to address these issues if they are to control community justice. Healthy leaders and key individuals are necessary to serve the vital function of providing positive examples and applying legitimate social controls in the community. Healthy community members may also foster health among other members, and encourage them to be active in community justice. According to some respondents, the "silent majority" will soon begin to end the denial over abuse and other ills and begin to heal themselves.

There is a need to understand the factors that build community capacity, so that the causes of a lack of community involvement can be addressed. Other dilemmas lie in how to translate conceptual support for an initiative to widespread community involvement, and how to address issues of community health without hindering the development or operations of community-based justice. Community capacity is both reliant upon, and affects, widespread involvement.

Community healing enables the beginning of capacity building. The success of community justice is reliant on the presence of a strong community, which includes the involvement of community members, community willingness to take responsibility for community problems, support for victims and offenders by community members, and a community-wide effort to heal. As LaPrairie puts it,

Substantive community problems...must be overcome before real progress is made in reducing the numbers of Aboriginal people involved in the criminal justice and youth justice systems (1992: 56).

As this thesis demonstrates, the First Nation appears to recognize the necessity of increasing community health and self-sufficiency and that the objective of peacemaking circles is to build healthier communities. But how can a community seeking health engage in healthy, balanced practices? Which must come first? One of the Prospect Community Justice Committee members argues that the desire for health provides the necessary fuel behind the quest for community control over social justice; however, the lack of desire for health amongst some community members may also fuel the resistance to community-based justice.

It is paradoxical that those communities which are most in need of community-based initiatives such as peacemaking circles are the least capable of developing and

sustaining them (LaPrairie 1992). However, "...[l]ike a child learning to walk – when they fall, we do not say to the child, 'you'll never be able to walk'" (Wedge 1994, cited in Stuart 1997).

Cultural teachings may begin to heal community members, and re-instill the traditional values that guide methods of addressing social conflicts. Increased efforts to encourage inclusivity and equal involvement, to demonstrate through community consultations that the opinions of community members are valued, to attempt to allay fears of change by including women, youth, and Elders in the process, and to help to address the issues that are hidden by denial are important tools in increasing the success of community-based justice. Professional training and the development of a larger group and wider range of healed individuals is one method of increasing community capacity.

Community healing involves the concerted efforts of community agencies, community members, and leadership. As Warry (1998) argues, due to the destructive aftermath of colonialism, the government has an undeniable responsibility to allocate financial resources to help fund healing initiatives in First Nations communities, and "vacate the field" (62) so communities may autonomously develop their own solutions.

An unhealthy community undoubtedly affects the success of a community-based justice initiative; and community healing and development are part of a larger strategy toward self-government (op cit). A lack of support for community justice may give the impression to outsiders that First Nations peoples are not prepared to invest in their communities and control their own destinies. Ultimately, state intervention in the lives of First Nations peoples will continue, and further destroy their autonomy, and any opportunity to self-govern.

The Criminal Justice System: Relinquishing Power and Reallocating Resources

The degree of commitment and support of the government and justice system will determine whether peacemaking circles actually happen and, to a large extent, how effective they are. Despite political interest in restorative justice, governments are not willing to “invest adequate resources in designing and developing the infrastructure and training necessary to reap the full potential of community justice” (Stuart in Cayley 1998: 191). Nor are they willing to reallocate the financial resources saved from finding alternatives to sending offenders to prison in the north, to community resources. These resources are required for follow-up through community services programming, which would enable victims and offenders to address issues associated with crime and victimization, and build stronger communities in the process. The unfortunate outcome is that restorative options may not be given the chance they need to prove themselves successful (especially with efforts to obtain funding), if proper and necessary resources do not exist to facilitate their practice.

With no additional funds in the community to make healing resources available, offenders may be seen to be given lenient sentences and provided with very little help for their problems. If an offender re-offends because limited community healing resources exist, self-government is that much further behind. Peacemaking circles provide a testing ground for self-government; thus, perceptions of failure could cost communities much more than their initial efforts at community justice.

However, relying on the federal government for funding affects a community’s autonomy, and perpetuates the unwanted dependency and paternalism that partially fueled the development of community-based justice initiatives. Yet, the result of governments

“vacating the field” may be more detrimental to vulnerable community members and victims if power imbalances in communities exist and community capacity to address crime and conflict is low. The types of cases dealt with in community peacemaking circles, and the variation in responses, may not accomplish “justice” if communities are not healed. The assumption that money will solve community problems is simplistic; clearly, communities also have to be interested in healing or building the capacity to be self-sufficient.

The criminal justice system’s own agendas of maintaining power and control, saving money, protecting retributive values and principles, and paternalistic attitudes also work against the efforts of community-based justice. The Prospect Community Justice Committee’s efforts to resist paternalism and co-optation from the government, and forge equal partnerships, appear to monopolize much of its focus and energies.

Cayley (1998) has questioned the extent to which peacemaking circles constitute an alternative to the system when community powers do not extend beyond the courtroom and community resources are not increased to accommodate offender and victim healing needs. While system involvement at the early stages of development of peacemaking circles and other community-based justice initiatives ensure that the rights of vulnerable groups are protected, and less than healthy communities are not abusing power over justice matters, the criminal justice system should relinquish control over justice in communities that have proven themselves capable of controlling their own affairs. This capability is reliant on successful efforts at capacity building, human resource investments, and healing, which are all currently dependent on government funding.

The need to relinquish control is also based on the reality that concepts of justice and the values that guide the western justice system are inconsistent with many First Nations values, including those that underpin peacemaking circle processes. It is fairly obvious that western justice values will not change in the near future, and if control is not relinquished, co-optation will result.

Government interest in maintaining power and saving money will also bring about the demise of community-based justice when community justice practitioners do not share the objectives of the former, and their accomplishment is not reflected in evaluations. However, although the values and processes may be different, community-based justice initiatives are working toward the same goals of reducing crime and conflict in communities and increasing public safety. Since the criminal justice system has largely failed to effectively accomplish these goals, community-specific approaches which are consistent with the needs and cultures of communities are necessary and justified.

If certain challenges at the system level are not addressed, there are three ways in which the system may justify continued and even increased intervention in First Nations communities. Firstly, if the lack of government funding continues for community-based justice, and this affects the ability of projects to realize their potential, governments will assume that communities are not ready or capable of resuming control over justice.

Secondly, it can be argued that peacemaking circles are an initiative indicative of the federal government's attempt to make amends to First Nations peoples by modifying the court structure and incorporating traditional First Nations values into the sentencing process. The problem with this effort is that, despite the unbalanced partnership,

governments believe they are making the criminal justice system more responsive to Aboriginal needs, when really nothing new may be occurring. The danger is that the government manages to convince itself that it has resolved the problem, and need not relinquish control and fund community efforts to pursue other more culturally-appropriate methods of healing and addressing crime and conflict. Based on the belief that peacemaking or sentencing circles do not represent radical changes to the current system,

There is a danger that the attention and acclaim accorded to circle courts, however warranted, will undermine more broadly based and holistic justice initiatives. Indeed, by suggesting “flexibility” on the part of the existing system and by catering to the ideal of community inclusion in the justice system, circle courts serve to sustain the institutional bases of western law, and continue to entrench the criminal justice system in Aboriginal communities (Warry 1998: 187).

Further, the Canadian government may convince itself that social problems in First Nations communities are not totally out of control, and that the socio-economic marginalization of First Nations peoples is not really a problem, and is thus, undeserving of attention.

Thirdly, the federal government can also convince itself that First Nations communities are plagued with dysfunction and internal conflict, to justify and rationalize government intervention and further their control over community justice initiatives. After not having had the practice, or luxury, of controlling their own affairs since colonization, many First Nations communities are inevitably and unfortunately not functional or financially secure enough, at this point, to single-handedly control their own agendas. It is a rare community that has the personnel and monetary resources to pursue effective community justice initiatives without the “guiding hand” of the state. It may be useful for governments to provide an open environment where interested communities

can come forward and reassert their power to design and develop their own program to meet their specific community needs and thresholds. Control imposed by the government will only perpetuate dependency on the criminal justice system, and prevent First Nations communities and their justice initiatives from achieving self-sufficiency.

Power is integral to not only the destruction of restorative justice, but also its revival. If the government decides it is willing to share some of its power, community justice initiatives may have a chance of being developed and operated successfully. The inherent rights of First Nations, which underpins the unique status of Aboriginal cultures within Canada, “require the Canadian state to begin to treat, in politics and law, Aboriginal communities as equal partners” (Warry 1998: 62).

These challenges at the individual, community, and system levels affect perceptions that peacemaking circles are an “easy way out”, which presents one of the most destructive and consistent problems of community-based justice. It appears from the research that some of those exerting the most resistance to community-based justice are those who may either feel excluded from its development and practice, perceive themselves to be powerless, or fear a potential loss of power. Victims, victim services workers, young people, community members who are not ready to heal, some non-First Nations community members, the RCMP, some criminal justice system and Department of Justice personnel are among the non-supportive stakeholders. Power imbalances are felt by victims and youth, within circles, within the community, and between the community and territorial and federal governments.

Peacemaking circles suffer from a perceived lack of support and legitimacy from both the community and the criminal justice system, which perpetuates community and

system resistance to community-based justice. Arguably, the former must be addressed before the latter can observe the benefits of community court peacemaking circles.

If peacemaking circles are extinguished because of a lack of recognition from the system, or perceived illegitimacy or ineffectiveness in the eyes of the system, and a lack of support (or outright rejection) from community members, other alternatives in community justice will suffer from skepticism and non-acceptance in the future. This may make the loss not peacemaking circles per se, but continued concerted effort toward progress, and self-government.

At least individually, Prospect's community members recognize these challenges; collectively, they can address them. If the challenges are ignored, inaccurate perceptions will continue, and peacemaking circles will suffer; conversely, if the community has the desire to address these challenges, the perceptions will perish, and peacemaking circles will have a very good chance at survival. On a very fundamental level, the thesis implies that these challenges must be addressed for community court peacemaking circles to accomplish their community building objectives. For the First Nation to control local justice, and eventually obtain self-government over health, education, employment, economics, and other related areas, it must engage in community healing and development, and engender widespread support and participation from community members. "In light of the social disorder circumstances...justice initiatives are seen as both requiring, and impacting upon, community development" (Linden and Clairmont 1998). In other words, the very objectives of community justice are, in their absence, often its greatest challenges.

Future Research: Promoting the Sustainability of Community-based Justice in First Nations Communities or Dooming it to Extinction?

Arguably, current pressures to conduct evaluations of peacemaking circle projects (or other healing justice projects) in First Nations communities are premature and to some extent, unreasonable. Because of the First Nation belief that one must look seven generations into the future whenever change is being contemplated, changes are not made unless their objectives are visionary (Royal Commission on Aboriginal Peoples 1993). The community-based initiative in Prospect is still in its infancy, and the accomplishment of its objectives can only be measured in the long-term. Instead of viewing the challenges outlined in this thesis to be fatal problems, it is more accurate to consider them the growing pains of a particular initiative.

If individual healing takes a lifetime, community healing takes generations (Warry 1998). Once impediments to success have been addressed, and a program's lack of success cannot be attributable to technical difficulties, evaluations can be conducted to measure whether an initiative is meeting its objectives. The issues confronting initiatives can be considered independent variables that may affect the success of initiatives. The effect of restorative justice, or the dependent variables (e.g., the changes in victims, offenders, and communities), should reflect the impact of the independent variables. Premature evaluations (i.e., evaluations conducted before objectives have an opportunity to materialize) may lead a less-informed reader or observer to conclude that the initiative is not meeting its objectives, and is not worthy of continued funding or operational attention.

It may be useful for communities developing and operating community justice to recognize some of the common pitfalls, and undertake community-based research to identify their own challenges. Unearthing the challenges of restorative initiatives enables communities to engage in self-improvement and modification, which increases the potential to meet community healing and other objectives.

Evaluations must occur in communities, but only when the objectives have sufficient time to be accomplished, and community capacity allows. Longitudinal, qualitative (based on interviews and observations) and quantitative research (based on operationalizing objectives into measurable indicators) would help to measure objectives and long-term changes in community members' perceptions of circles and levels of participation, as well as community empowerment, connections, capacity, revitalization, and development. Each community has the responsibility to conduct its own evaluation (so the community can accurately measure more subtle changes), based upon a valid evaluative framework.

If restorative justice is to be considered more than an alternative for first time or petty offenders, it needs to be proven successful with more serious youth offenders (e.g., youth who were destined to custody), as well as less serious youth offenders. If restorative justice is reserved only for those youth who never would have otherwise re-offended (70-85 percent), recidivism rates cannot be used as an accurate measure of the effectiveness of restorative justice¹. Real reductions in recidivism can only be measured with a population that would have otherwise been assumed to re-offend (i.e., those with

¹ It has been proven that treatment is more effective in the community, that jail sentences have a tendency to increase recidivism rates, and that any kind of intervention in the lives of youth who should not be receiving any (e.g., sending a petty, first time young offender to a restorative justice program) is detrimental (Lilles 2000).

prior records). Evaluations are important in moving a community-based initiative beyond the status of a “pilot” project to a more permanent status.

Research that compares how well restorative justice and the retributive criminal justice system meet common objectives, such as denunciation, community safety, deterrence (which includes a reduction in recidivism rates), and crime prevention, as well as their separate objectives, is also required. While perfectly similar and constant control groups and variables are impossible with human participants, controlling for factors such as background, degrees of connectedness with family, school, work, prior offence history, and the seriousness of the current offence may be possible. The results will demonstrate which type of intervention is more effective, at achieving common objectives, and at accomplishing additional objectives. These studies are obviously required to demonstrate that alternatives are not only necessary because of the failures of the current system, but because alternatives have been proven effective. To prevent further marginalization of restorative justice, the costs and benefits of both systems must be demonstrated. As Cayley puts it,

This requires relevant comparisons that factor in both the full benefit of community justice in preventing crime and building social morale and the full cost that the formal crime control industry imposes through lengthy incarcerations, broken families, and the cycle of violence that prison perpetuates (1998: 191).

Once evaluations are completed, successes must be shared; otherwise, the potential (or realized successes) of restorative community justice to address crime and victimization will be underestimated, and initiatives will continue to be marginalized. More research on community justice in First Nations communities is required to inform academics, policy-makers, the media, and the public, of progress made in communities.

Canadians must be apprised of First Nations community capacities to control issues and agendas so that self-government can become an accepted reality.

Additional Questions

LaPrairie (1994) recognizes that certain assumptions underpin the practice of and research on community peacemaking circles. These include assumptions about the causes of crime and utility of restorative or healing responses, a sense of collective responsibility, and the need for community harmony and empowerment. Based on some assumptions made in this research and lessons learned from the community of Prospect, this thesis has provoked many questions (practical and otherwise), which should be explored with further research.

- Additional research on community-based justice should be conducted in specific communities, to discover attributes of capable communities, and the methods taken to build community capacity and sustain widespread community participation.
- New research should examine the individual factors that may affect a young offender's potential to successfully participate in restorative or transformative justice processes, regardless of their cultural background, historical context, or community. Of particular interest is the question of whether youth participate in peacemaking circles solely to avoid incarceration, whether they see value in the objectives of restorative processes, and whether their desire (or lack thereof) to change is simply a function of their youth, or individuality.

- International case studies should be conducted of communities or countries that have successfully partnered with the existing criminal justice system, or incorporated restorative justice principles into legislation without co-optation by the state.

Policy and Legislation: Expanding Provisions to Accommodate Restorative Justice

If the criminal justice system is going to make an effort to incorporate restorative justice practice, legislation must be philosophically consistent with the values and theories underlying restorative justice and the direction which community justice is taking. Incorporating consistent legislation will enable restorative processes to be implemented effectively across all jurisdictions. The increased amounts of discretion and community control enabled in community-based justice are highly problematic if punitive sanctions are imposed without the legal safeguards inherent in the currently operating retributive system.

Legislating restorative justice may be one course of action. The current problem with the absence of legislation is that Crown appeals have undermined peacemaking circle efforts (Henderson in Cayley 2000). Legislation would likely guarantee a program's respect and legitimacy, and government funds would presumably be allocated to restorative justice and community efforts.

However, there are concerns with legislating restorative justice. Presumably, legislation would not engineer a shift away from retributive justice, and tinkering would not produce promising results for restorative justice. Unless philosophical change accompanies legislation, it is likely that co-optation would destroy the true meaning of restorative justice, and relegate it to an add-on to the retributive criminal justice system.

While sentencing guidelines would ensure proportionality and parity, the input of community members, victims, and offenders in a circle process would be rendered meaningless. Communities would again be accountable to the objectives and standards of the criminal justice system. For example, guidelines for alternative measures programs under the Young Offenders Act limit the number and type of offenders eligible for inclusion (Linden and Clairmont 1998). “Because restorative justice programs must be tailored specifically to each community’s needs and resources, regulations and guidelines may impose a degree of standardisation that will reduce the effectiveness and legitimacy of these programs” (Linden and Clairmont 1998: 8).

Legislating restorative justice may also discourage communities from considering whether they are ready, interested, or have the capacity to develop community-based restorative processes. Conversely, offenders and victims residing in an area with no restorative or community-based initiative would be precluded from having the option.

The theoretical and policy bifurcation inherent in the proposed Youth Criminal Justice Act may lead to divided populations: the youth who need restorative processes the most will not benefit from their application. Theoretically, restorative justice is an approach that should be used especially with violent, serious youth offenders, to reconnect youth to their communities, address underlying issues that are associated with criminal behaviour, and help erode the stigma and criminal identity that results from criminal justice system involvement. Severe dysfunctions at both the individual and community levels signal an even greater need for care. If restorative justice is never used with more serious offending youth, it will never be proven effective with that population. Until restorative justice is proven to be as ineffective as the current system in reducing

crime among chronic youth offenders, it should be attempted. For this reason, and in light of the more serious types of cases dealt with in First Nations communities, it is essential that experiences and results be shared, and successes be recognized by legislators.

Realistically, restorative justice cannot be attempted at the risk of public safety. This would serve neither communities, nor the restorative justice movement, well. Provisions for conditional sentencing for young offenders may provide a method whereby restorative justice can move beyond currently imposed and ungrounded limitations. Provided that community support is available, serving community-based sentences with the looming threat of jail for non-compliance would provide youth with what punitive sanctions have failed to accomplish: an increase in the swiftness and sureness of responses to offending behaviour.

Community-based sentences may meet the objectives of youth, victims, communities, and governments alike; spend tax dollars more productively; increase accountability among young offenders; address victim healing needs; foster an environment where communities are responsible for teaching young people law abiding behaviour; re-connect youth to their communities; encourage family and community-based social control; reduce the reliance on incarceration; prevent the negative repercussions of custodial experiences on youth and communities; and provide youth with a final opportunity to demonstrate responsible use of their freedom.

The community development objectives of restorative social justice call for improvements in social living conditions, and changes in the underlying assumptions that guide legislation. Implementing community youth development initiatives with a

preventative agenda has potential for all youth – from those who do not offend at all to the most serious offenders. Harsher penalties for young offenders are neither productive responses, nor a deterrent to youth crime, and only serve to worsen conditions, considering the fact that many (especially serious) young offenders are accustomed to living harsh lives (which also serves to partially explain their conflict) (see Schissel 1997).

Exposing youth to further, and increased levels of harsh treatment only increases their marginalization, which causes youth to seek out other criminal and marginalized populations, and perpetuates their distrust, hatred, and bitterness for the criminal justice system, for authority, and for society. Improving living conditions on the outside (rather than making sentences harsher on the inside) provides connections that prevent crime, and advantages that increase the unattractiveness of incarceration. Declaring war on youth only encourages young people to retaliate.

We will win the war on crime when we are ready to invest our time, energy and tax dollars in America's most vulnerable children, so that they never become America's most wanted adults. Suggesting that we can win the war against violent crime solely by building more prisons is like saying that we can win the war against cancer by building more cemeteries (Klass in Elikann 1999: x).

Community court peacemaking circles are not a panacea, and are only one approach to addressing youth crime and victimization. They are a process based on a philosophy that involves addressing issues of the past, and building healthy communities for the future, through community development. In essence, they represent a bridge to another destination. By addressing the underlying issues of offenders and victims, improving social conditions confronting the community, strengthening bonds within and

between families and community members, and building increased community capacity to collectively resolve conflict, the community of Prospect will be equipped to take responsibility for its own issues and determine its own destiny. The journey will be neither painless, nor easy; but community court peacemaking circles are a step in the right direction. However, these initiatives cannot be realized under a system of governance that denies First Nations peoples the inherent right to health and self-government, and is intent on furthering their dysfunctionality and powerlessness.

The western world has much to learn from the developments currently occurring in Prospect and other First Nations communities in Canada. Rather than applying band-aid solutions to deeply-embedded and persistent social ills and inequalities, the federal and provincial/territorial governments and the public need to invest in a visionary, future-oriented strategy and approach to justice and community health, for the benefit of our young people and future generations.

APPENDICES

APPENDIX A: INTERVIEW QUESTIONS

The following questions are only some of the questions asked of a specific group of respondents (e.g., youth). Many other people were interviewed, whose questions were specific to their work or experiences.

- Please tell me a bit about yourself (background, childhood, etc.).
- What is it like for you, living in xxx? What are some of the things you like about xxx? What would you change about xxx? (what would keep you out of trouble?) What do you do for fun? What do you consider important? Have you always felt this way?
- What does the word, "community" mean to you? What do you think your role is in your "community"? (Do you think that your behaviour impacts your "community" at all?)
- Where do you see yourself next year? in 5 years? 10 years?
- Do you feel connected to your culture? If so, how does it impact your life? If not, what/who do you feel most connected to, if anything? Who is the most important person in your life?
- Have you served time in custody before? What did you think about it?
- Have you participated in sentencing circles as an offender? When was this (and how many times)? Why did you choose to take part in the circle process? Could you describe it to me?
- What did you think about the circle sentence? Could you compare it with going through the regular court system? (eg. compare your disposition). Say a condition of your probation through the courts was to attend a counselling program (eg. D&A). Or, say you went through the circle and the same recommendation came out in your agreement. Do you think there would be a difference in how seriously you would take the condition or recommendation? how?
- Can you see any benefits of having gone through the circle? Drawbacks? Do you have any criticisms, or suggestions, as to how it could be done better?
- Did you feel that your needs, rights, and interests were respected in the circle?
- Was the victim of your offence present in the circle? Was it easy for you to confront your victim? Could you give a genuine apology to your victim and mean it?
- Describe how you felt about your victim, before and after the circle experience (ie. did the circle help you to understand how your victim feels?)
- What was the agreement made to repair harm to the victim? Did you follow through with this agreement?
- How did you feel about speaking on your own behalf?
- Did it make you feel responsible for what you did? Did it change your thoughts/feelings about your offence?
- How did the circle make you feel about yourself? Did this change from the beginning to the end of the circle sentence?
- Do you think undergoing the circle process and following through with the recommendations is easier than serving time in custody?

- How has the circle changed you (if at all)? How has it impacted your offending behaviour? Are you still involved in the system? Why do you think that is (what would you say is the cause or was a motivation for that)?
- Why do you think you've come into conflict with the law? (example?) In your opinion, have you ever considered yourself to be a victim? Would you like to share how?
- What was identified in the circle in terms of your healing needs? Have you addressed/begun to address these elements in your life? How? In xxx? Has anyone helped you in addressing these needs? Who, and in what way? What were some of the biggest challenges for you to begin your healing path?
- What do you think of the justice committee? Have they helped you in any way? Do you feel they represent the community in an unbiased way?
- Do you have any brothers and sisters? What is your relationship with your family like? How has the circle affected your relationship with them (if at all)?
- (after having gone through the circle), How do you feel when you walk down the street or attend a community event in xxx? (if the youth has served time in custody), how did you feel about walking down the street when you were released?
- Say one of your friends or relatives (under the age of 18) asked you about your experience in the circle. What would you tell them? Would you recommend the circle process to them?
- What do you think about the potential of circles as a response to youth offending behaviour, in comparison to a jail sentence?

APPENDIX B: FOCUS GROUP QUESTIONS

The following questions are only some of the questions asked of a specific group of respondents (e.g., the Prospect Community Justice Committee). Other focus groups were conducted, and asked different questions, which were specific to focus group respondents' work or experiences.

INTRODUCTION:

- Please provide a brief historical context for xxx. What were the reasons why the community initiated circle sentencing? What are some of its main objectives?
- What are some of the criticisms levelled against circle sentencing, and can you provide arguments against these criticisms?
- How can the restorative justice model (or CS as a restorative initiative) avoid being considered just another form of diversion? Do you think it can be used for serious offences such as sexual assault? murder? Where would you draw the line?

YOUTH:

- What are some of the challenges that young people face in this community, and how does/can XXX address some of these challenges? What else is required?
- What is the potential of circle sentencing to address issues associated with youth crime, especially in comparison to regular court processes?
- What are some of the positive effects that CS has on a young person and his/her community? Do they feel more responsible for what they did? Does it make them feel that people care about them? Do you think that some youth accept the community justice route simply to avoid incarceration (are FGCs easier)? Do FGCs help them to stay out of trouble in the future? Do you think FGCs are generally a better way of dealing with youth crime?
- Is there much victim involvement in CS? (if not, why not?) Do young people have the maturity or cognitive abilities to identify with the victim? Is it easy for them to confront their victim? Can they give a genuine apology to their victim and mean it? Do FGCs help youth to understand the victim's situation (empathy)?
- What qualities are necessary in the youth's attitude or background that would be prerequisites to being accepted for circle sentencing? What if they are not at a stage in their lives when they are ready to make some positive changes?

CHALLENGES:

community:

- What are some of the challenges with which XXX is faced, on a community level?
- What criteria are necessary within a community for community justice to work? Are organizational or other kinds of changes required (within the structures of communities, or within the system?) (eg. attitudinal, philosophical)
- Once a restorative justice method has been undertaken, what types of support must exist in the community to continue the healing process of the offender? Do these resources exist?

- Restorative justice aims to "restore harmony" in the community. Can we assume that communities are inherently harmonious? What if they aren't?
- In what way does politics play a role in community justice? (within the community, or between the community and the system)
- What do you think the community thinks about circle sentencing and its capacity to address offending behaviour, in comparison to the courts? (do you feel resistance? if so, why?)

government:

- With what kinds of challenges has XXX been faced, regarding the development of sentencing circles in partnership with the system?
- *resistance*: Do you experience resistance to your initiative from other agencies (eg. police, govt, social services, probation, etc.)? How does this affect operations?
- Considering all the time and efforts you have spent in developing this initiative, why are circles not operating on a very frequent basis, so that they are the normative method of addressing offending behaviour? (why are they still only used as a peripheral method to the courts?)
- What are the dynamics or forces that prevent change to the existing justice system, that would otherwise allow community justice to flourish and realize its potential?
- *funding*: How important is legitimacy or government recognition of community justice?
- What is the role of funding in community justice? (is it a double-edged sword?) Considering the government seems eager to encourage community justice initiatives (and funding is not really a problem for them), why is funding such a battle? Does the lack of funding or the necessity to solicit funding (government or otherwise) preclude community justice (ie. make it impossible)? How does the lack of/constant battle for funding affect operations? (eg. adequate follow-up? training opportunities?)
- *power*: Do you think the government is open to relinquishing some of its power over justice to the community level?
- Is there a drive toward Family Group Conferencing models of restorative justice in the Yukon? Why do you think this is?
- Why do you think the government is becoming interested in the restorative justice model? How can it smoothly shift from a retributive philosophy to a restorative one?
- *co-optation*: Is the threat of government co-optation of community justice a reality? How will it affect formal and informal justice practices in communities? Will this bring the justice experiences of communities back to where they started (with no control over their own community initiatives)? How might the criminal justice system modify the restorative justice model to better suit its own needs of social control?

- *self-governance*: What role does justice have in First Nations self governance? Is it a good idea to develop community justice partnerships with the formal justice system before measures are taken toward self governance?
- What advice would you give to other communities in terms of developing their own restorative initiatives?

self evaluation:

- When it comes time to assess your own initiative, what are some of the indicators of success that you will consider? What do you feel is the purpose of self-evaluation? Do you think your initiative will be held up to the same level of scrutiny as traditional crime control initiatives?
- Where do you see XXX's community justice initiative in 10 years?

APPENDIX C: SCIENTISTS AND EXPLORERS ACT LICENSE

YUKON-CANADA
SCIENTISTS AND EXPLORERS ACT
LICENSE

PURSUANT to the provisions of the Scientists and Explorers Act (1958) of the Yukon, permission is hereby granted to:

Anna McCormick (Simon Fraser University)

to enter the Yukon Territory to conduct scientific research with respect to:

Dynamics of Community Justice Circles As a Restorative Response
to Youth Crime in YT

GENERAL CONDITIONS

1. A complete, final report of the research conducted under this license shall be submitted, in duplicate, within one year of completion or termination of the project.
 - a) A field or progress report, including descriptions or catalogues of collections made (where applicable) shall be submitted in duplicate on, or before, the expiry date written below.
 - b) The Licensee shall provide two copies of any report or article published on the research conducted under this license.
2. All camps shall be established according to the provisions of the Territorial Land Use Regulations.
3. All steps shall be taken to avoid unnecessary disturbance of wildlife.
 - a) No camp site shall be established within 2 km of an active raptor nest.
 - b) When using aircraft, maintain a minimum of 1,000 feet over wildlife such as sheep, raptor nests and migrating caribou.
 - c) Pay particular attention to bear habitat, and take all steps necessary to avoid contact with bears.
4. The Licensee shall inform any nearby First Nation(s) of the field activities conducted under this license, and shall not proceed as long as there are irreconcilable objections from the First Nation(s).
5. The Licensee shall strictly observe all applicable Territorial and Federal legislation and regulations.

OTHER CONDITIONS

NIL

THIS License is valid for the period March 21 to
October 1, 19 98.

DATED at the City of Whitehorse, in the Yukon Territory, this 16th day of
March, A.D., 19 98.



DIRECTOR
HERITAGE BRANCH
Department of Tourism

APPENDIX D: INFORMATION SHEET FOR RESEARCH PARTICIPANTS

This proposed thesis research seeks to observe and document the dynamics of a community justice initiative and its potential to address the issues associated with youth conflict with the law. The intention is to assess the level of community satisfaction with peacemaking/sentencing circles as a primary response to youth crime in the community of xxx, YT. It is proposed that this community's satisfaction with the potential of circles to identify and address the healing needs of (participating) youth will not only affect a youth's continued involvement in criminal activity, but also directly impact on the health of future generations and of the community as a whole. The restoration of harmony to a community also aids in increasing First Nations solidarity (in the case of a First Nations community), revitalizing culture, and furthering attempts at encouraging self sufficiency and reasserting power and authority at the community level.

The aim of the research project is to assess, from your perceptions of the circle process, the potential of restorative justice-based community initiatives as a response to youth crime. I'd like to know how you (as an offender, victim, justice personnel, youth worker, Elder, community member, program developer, etc.) feel the circle process works, from its limitations to its successes.

The information with which you provide me will be held in the strictest of confidence; to further ensure your identity (especially for victims and offenders), I'd like you to choose a pseudo name by which you will be identified in the final research product, and any subsequent papers. Only you and I will know of your chosen alternate identity. I'd like you to be as truthful as possible in your responses, with the knowledge that you will not be judged or misrepresented in the research, no matter how unpopular your opinions might be. Your responses will not be used in any way to help or hinder your position or situation, and will be represented as you intend them in the final report. You have the right to terminate our interview at any point, and to refrain from answering any specific questions.

I am requesting your informed consent to participate in the interview, and to permit me to record our conversation. Tapes will be destroyed once the transcription is completed. I will provide you with a copy of the transcription, so you may delete any information you decide not to share, or add any information you feel is relevant.

The information that you share with me will allow your opinions regarding your perceptions of the circle process to be heard anonymously. The community of xxx and the xxx Community Justice Committee may use this information as follow up for circles, as well as to possibly modify the existing circle process according to your and others' suggestions. It is hoped that the input of various community members and circle participants together will positively affect the future of the youth involved in offending behaviour, as well as impact the health of the community in general. The final research product will also be used to complete my Master's thesis at Simon Fraser University. The communication of the successes and challenges of xxx Community Justice Committee

circles will provide insightful information on the potential (and limitations) of restorative-based methods to other Canadian communities who are interested in responding to youth offending behaviour through the development and implementation (or improvement) of their own community-specific justice initiatives.

APPENDIX E: FOCUS GROUP POSTER

ARE YOU A YOUNG PERSON?

DO YOU CARE ABOUT THE YOUNG PEOPLE IN YOUR COMMUNITY?

If you answered yes to either of the above questions, please read on. My name is Anna McCormick, and I'm a graduate student of the School of Criminology at Simon Fraser University in BC.

I'm in the Yukon for the summer, and would like to talk with people who are interested in alternative forms of youth justice, or circle sentencing, or who have experienced circle sentencing in _____ (in any way!). I'm trying to organize some small group discussions about what community members think about youth crime, what's been done to address it, and what needs to be done to help young people get started on a healing path.

So if you answered yes to either of the two questions at the top of this page, maybe we can help each other. This research is part of my Master's thesis, which will be available in your community once it is written. Your opinions and suggestions will also enable the

Justice Committee to know what you think, and help them to better address the healing needs of young people in _____. Most importantly, your suggestions will help towards providing a better future for the young people of _____, their children, and the community.

Your thoughts of the potential of circle sentencing and other methods to address the healing needs of young people in conflict with the law will help

If you do decide to join in a discussion, your name will not be used, but your comments will be invaluable.

Refreshments will be served, and all young people who participate will be given a coupon for an ice cream at the _____

**APPENDIX F: COMMUNITY JUSTICE COMMITTEE AND CIRCLE SENTENCING
APPLICATION AND GUIDELINES**

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Information:

This application is required to apply to the _____ Justice Committee. Please indicate which service(s) is (are) being requested of the Justice Committee.

- | | |
|--|---|
| <input type="checkbox"/> Circle Sentencing | <input type="checkbox"/> Pre - Charge Diversion |
| <input type="checkbox"/> Post - Charge Diversion | <input type="checkbox"/> Sentence Advisory |
| <input type="checkbox"/> Mediation | <input type="checkbox"/> Community Work Assistance |
| <input type="checkbox"/> Probation Assistance | <input type="checkbox"/> Dispute Resolution Council |

The _____ Justice Committee is responsible for reviewing the applications and will decide:

1. if the applicant is suitable for working with the Committee
2. if the applicant's case will be transferred to Circle Court
3. when the case will be heard
4. the process that will be taken to resolve the issue presented to the Committee

Qualifications to Apply:

1. Offender has pled or has been found guilty to all outstanding charges
2. Adult or Young Offender may apply
3. The Offender must be motivated and willing to commit to a wellness or healing plan and to follow that plan. The Offender must be willing to agree to all requirements of their Circle Sentence.

Steps Required:

1. You must advise the Court as soon as possible of your intention to apply for Circle Sentencing.
2. Find at least two community members who are willing to support you in your healing, who will be available to attend Justice Committee meetings to answer questions and who will attend Circle Court to support you. You need to discuss this with them and if they agree, they must sign your application form.
3. Make an offering to an elder and if they agree to support you, have them sign your application form.
4. Complete and submit the Circle Sentencing Application as soon as possible to the Justice Committee at the Coordinator's office.
5. Meet with a Community Justice Support worker as soon as possible to discuss your application and to start putting together a healing plan.

Information:

This application is required to apply for _____ Circle Sentencing. The justice committee is responsible for reviewing applications and will decide:

- a) if the applicant is suitable for circle sentencing;
- b) if the applicant's case will be transferred to circle court; and
- c) when the case will be heard

Qualifications to Apply:

- 1. Offender has pled or has been found guilty to all outstanding charges.
- 2. Adult or young offender may apply.
- 3. If not a member of _____ First Nation, the offender must have at least two CTFN community members agree to support them.
- 4. The offender must be motivated and willing to commit to a wellness or healing plan and to follow that plan. The offender must be willing to agree to all requirements of their Circle Sentence.

Steps Required:

- 1. You must advise the Court as soon as possible of your intention to apply for Circle Sentencing. This may be through your lawyer or Court Worker.
- 2. Find at least two community members who are willing to support you in your healing, who will be available to attend Justice community meetings to answer questions, and who will attend Circle Court to support you. You need to discuss this with them, and if they agree, they must sign your application form.
- 3. Make an offering to an elder and if they agree to support you, have them sign your application form.
- 4. Complete and submit the Circle Sentencing Application as soon as possible to the Justice Committee at the Justice Coordinator's Office.
- 5. Meet with a Community Justice Support Worker as soon as possible to discuss your application and to start putting together a healing plan.

ON CIRCLE SENTENCING IF YOU NEED ANY HELP FILLING OUT YOUR APPLICATION OR IF YOU NEED MORE INFORMATION PLEASE CALL THE JUSTICE COORDINATOR.

Name:

Phone:

Address:

Contact Person:

Phone:

1. List all charges before the Court:
2. List any people or agencies that you have contacted for assistance and the steps you have taken to begin your healing journey and to accept responsibility for your actions.
3. List any steps you plan to take to continue your healing journey and to accept responsibility for your actions.
4. Community Support (you are encouraged to find at least 2 community members who will support you).

As a support person I have discussed how I can offer support to this applicant and assist them in their healing journey. I am also willing to attend their Circle Sentencing and, if required, to attend the Justice Committee meetings to answer questions.

Name Signature Phone Number Date

Name Signature Phone Number Date

5. Elder (you are encouraged to make an offering to an elder who will support you).

I have accepted the offering made by the applicant and have given them my permission to apply to the Justice committee for Circle Sentencing.

Name Signature Phone Number Date

6. Name of your lawyer or court worker _____.
7. I grant permission for my Criminal Record, Young Offender Record, and any Pre-Sentence Report to be released to the

I agree to commit my time to any Sentencing Plan established at my Circle Sentencing.

Signature

Date

Recognizing that:

1. Anyone interested in participating in the Circle needs to be aware of and understand the processes involved
2. developed guidelines will facilitate this understanding
3. within each community the Circle process can and should be adapted to reflect the communities specific needs, traditions and values

These guidelines are drawn from the experience of several Yukon communities in an effort to promote public understanding of the essential principles of Community and Peacemaking Circles.

GUIDELINES

1. **Acceptance of Responsibility by Offender**
Before applying to the Circle process, the applicant accepts full responsibility and enters a guilty plea.
2. **Applicants Consent to Community Process**
The applicant fully and clearly agrees to participate in the circle if accepted.
(note: Each community justice committee develops their own guidelines for accepting or rejecting an applicant)
3. **Appropriate Community Support**
Acceptance into the community circle process may depend upon family and community support sufficient to establish a support group for the applicant.
4. **Victim Consulted**
As soon as possible victims are informed of the application, informed of the Circle process, and asked for their input.
(note: While very influential, victim input does not by itself constitute the basis for accepting or rejecting an application.)
5. **Victim Involvement**
Victims retain a free and unrestricted choice with regard to their degree of participation in the Circle process.

Community Justice committees recognize the importance of responding to, respecting, and supporting the needs of the victims. Support groups for victims are established as soon as possible through a community victim coordinator where and when finances permit. Victim support groups are essential whether the victim decides to participate in the circle or not.

APPENDIX G: MEDIA CLIPPINGS

Circle erodes confidence: Phillips

By Karan Smith
News Reporter

Circle sentencing is further eroding public confidence in the justice system, says Yukon Party justice critic Doug Phillips.

"We shouldn't be experimenting at the expense of the victims," he said Thursday.

"This is all about making a justice system work. It's all about people having confidence in anything new that we try.

"I think the speed at which we're going is causing more harm than good."

Phillips referred to last week's circle sentencing of Jason Paquette.

The 18-year-old was sentenced to a six-month conditional sentence and two years probation for an armed robbery of Centennial Video in January.

(He had already served six months in remand, which equals 16 to 18 months, said Territorial Judge Barry Stuart.)

This week, the victim expressed anger at not getting her full say.

It wasn't a problem with the circle, but a concern that Paquette was not sincere about his remorse and turning his life around, said Francine Girouard.

Yukon Justice minister Lois Moorcroft should talk to the chief territorial judge about the public's concern over using circles for serious crimes, freedom of media and routes of appeal, said Phillips.

But Moorcroft won't be doing that until she hears from conflicts commissioner Ted Hughes about what con-

stitutes appropriate communication between the Yukon government and the judiciary, she said Thursday.

His report is expected at the end of August.

"Any new approach is bound to be greeted cautiously," said Moorcroft. "But, I have to say, circle sentencing has been used for a whole range of offences.

"I think it's very important

"We want the offender to be rehabilitated or healed. We also want the victim to be healed."

(in) the justice system, whether it's an alternative measure, like circle sentencing, or whether it's the mainstream system, we find better ways to have a victim-centred approach."

In a circle, the offender must admit guilt and be willing to address the root of criminal behavior.

Paquette's circle was held over two days and involved more than 30 people each time.

Discussion ranged from the facts of the case, to the victim's comments, to the offender's suggestions on his own sentence.

She added that circles don't result in lenient sentences; many say it's harder because the offender must accept full responsibility.

Community justice committees which run the circles at Kwanlin Dun, in Carcross and Haines Junction, look at the offender's circumstances, not the crime, Moorcroft said.

In a blend of Canadian court and traditional aboriginal justice, there's bound to be friction, said Mike Winstanley, the manager of Kwanlin Dun Community Justice Circle Sentencing.

For example, media is asked to be careful about quoting people in the circle because people have to be able to speak from the heart, he explained in an interview

this week.

"That's where the power of the circle comes from."

The reasons for needing this traditional alternative are clear, said Winstanley, quoting statistics of the higher than average number of aboriginal people in federal penitentiaries.

"The bottom line is, we want rates of recidivism to go down.

"We want the offender to be rehabilitated or healed. We also want the victim to be healed.

"We're not successful 100 per cent of the time, but it seems it's more successful than the formal system."

Source: Karan Smith, *The Yukon News*, Friday August 14, 1998.

OPINION

SOLE: LEGITIMUS NON CARBORUNDUM

ESTABLISHED 190

Source: Roy Peterson, The Whitehorse Star, Friday August 7, 1998.

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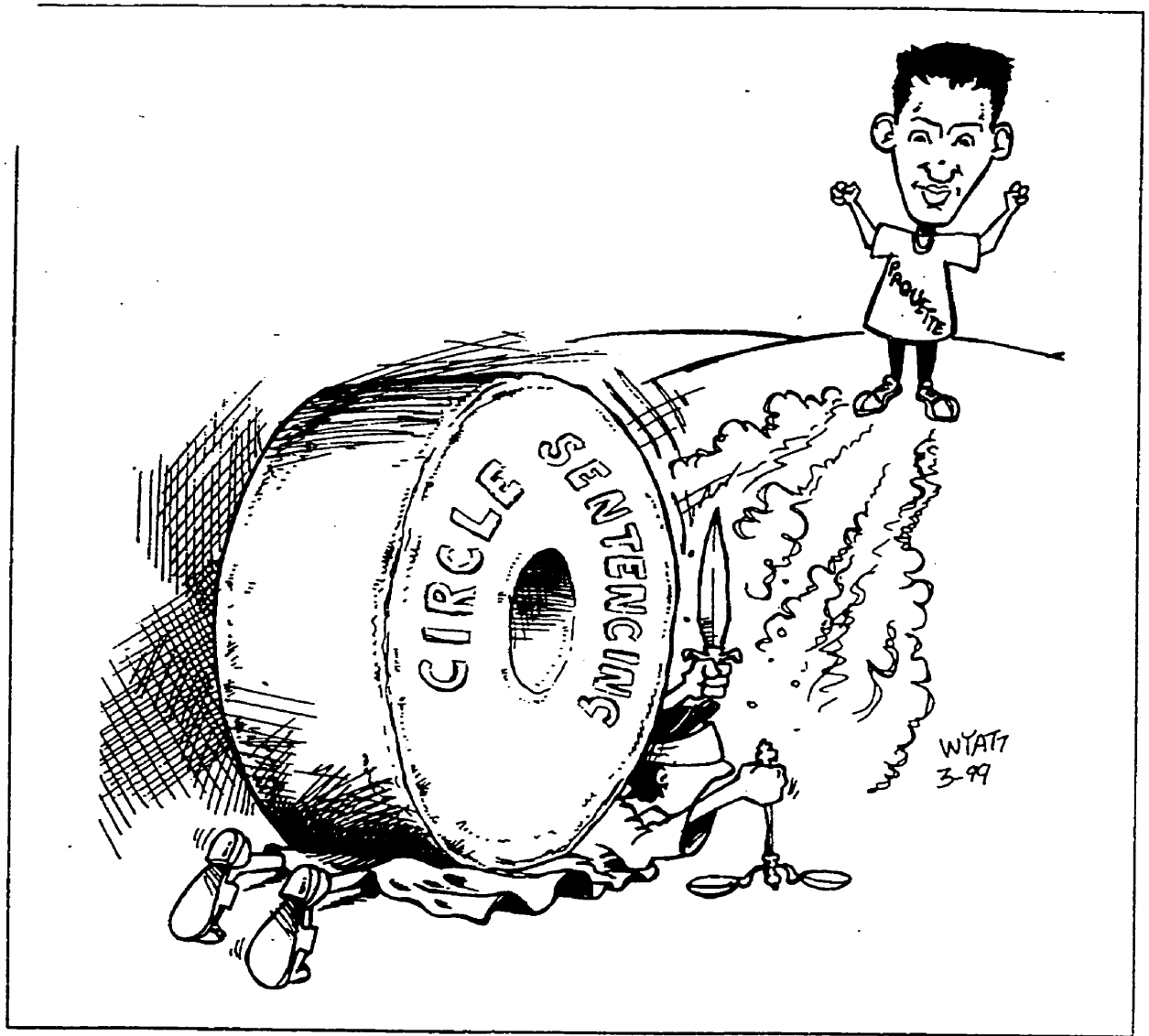
SEEN
TO

BE

EXTRA, EXTRA... READ
ALL ABOUT IT...

PHFFT!

JUDGE MUZZLES REPORTERS
AT CIRCLE SENTENCING...



Source: Wyatt, *The Yukon News*, Friday March 12, 1999.

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