RESTORATIVE JUSTICE IN BRITISH COLUMBIA’S YOUTH PROBATION SERVICE

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ABSTRACT

The last decade has brought with it new youth criminal justice legislation: the Youth Criminal Justice Act. This federal legislation created more options for practitioners (e.g., police, courts and probation) but, more importantly, a much more definitive stance on the use of restorative justice measures when dealing with youth in conflict with the law. This paper examines the ways in which youth probation and restorative justice are conceptualized and put into practice by the British Columbia Ministry of Children and Family Development’s Youth Justice Branch, and how these practices have been influenced by the implementation of the YCJA. Although progress towards becoming a more restorative based system has been made, B.C. could benefit by examining other youth justice initiatives taking place in Canada and internationally.

**Keywords:** Restorative Justice; Youth Probation; Youth Justice; Ministry of Children and Family Development
DEDICATION

For my family: they told me that I had it better than most kids; they were right.
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1: RESTORATIVE JUSTICE AND THE BRITISH COLUMBIA YOUTH PROBATION SERVICE

Few topics arouse public interest and opinion as youth crime. The sensationalization of crimes committed by youth is often followed by a predictable spike in public outrage and demands for harsher punishments. As a response to this “pervasive” and “growing” problem (as perceived by the public), suggestions for dealing with these youth often include reducing the age of criminal responsibility, incarceration, and(or) elevation to adult court (Alphonso, 2010). Despite Canada's international reputation as a tolerant and liberal society (Dion, 1997), the nation's treatment of youth in conflict with the law has been unduly harsh, especially when one takes into consideration that youth are more likely to be the victims of crime as opposed to perpetrators (Government of Canada, 2011). Most Canadians are unaware that Canada has a history of imprisoning youth at an alarming rate when compared to other industrialized nations.

The last decade has brought with it a change in federal government, from Liberal to Conservative, as well as new youth criminal justice legislation. This federal legislation - the Youth Criminal Justice Act (2003) - brought with it more options for practitioners (i.e., police, courts and probation) but more importantly, a much more definitive stance on the use of restorative justice measures when dealing with youth in conflict with the law. This paper will examine the ways in
which youth probation and restorative justice are conceptualized and put into practice by the Ministry of Children and Family Development’s Youth Justice Branch and how these practices have been influenced by the implementation of the YCJA. Suggestions will also be offered which focus on future directions for the BC Youth Probation Service as well as the youth justice system.

For the purposes of this paper, restorative justice is to be understood and defined as a philosophy which views crime as a violation of relationships between offenders, victims and the larger community (Zehr, 2002). Zehr (2002) also suggests that restorative justice is a process-based philosophy in which the journey is as important as the outcome. In order to sell the concept of a value/process-based approach to offending to a justice system that still asks “what works?” and advocates for punishment, the philosophy of restorative justice practices must be highlighted. What should make restorative justice so appealing to youth justice practitioners is the belief that society holds that youth should be treated differently from adults and provided with support, services and guidance to learn from their mistakes and change their behaviours (Alvi, 2000). This belief does little to settle the age old argument of treatment vs. punishment and, ultimately; what works? How much treatment? How much punishment? Does one work without the other; or even, why punish at all? Restorative justice focus on victims, offenders, and the community, asks what can be done to repair the harm caused rather than what can or should be done to or for the offender. This philosophy would constitute a radical shift for the adult criminal justice system and perhaps an even more difficult shift for the youth system since there
remains a strong degree of support for “treating” youth and focusing on their rehabilitation. What makes restorative justice a “natural” option for criminal justice professionals is that due to the degree of support society holds for the treatment of youth, individuals (especially victims) may be more likely to participate and seek involvement in practices that will be beneficial not only to themselves, but to the affected youth as well. Voluntary participation that focuses on compensation, reparation, and justice (in the sense of equity, fairness and balance) for victims is an ideal that all restorative justice advocates can hope to aspire to.

What remains to be examined is whether these ideals can be realized within the current criminal justice system (specifically youth probation services) in a meaningful and successful way. This paper will explore current practices which have placed the practical responsibility for “administering” restorative justice on probation services in British Columbia. The very nature of restorative justice questions whether it is appropriate to have a punitive justice system that focuses on enforcement and surveillance, supervise and implement practices which seek to remove power from the system and offender and place it in the hands of the victim and the community. This shift from a focus on the offender to a focus on the victim may be the most significant hurdle to fully implementing a system based on understanding, community, restoration and reintegration.

Canada has created and implemented a number of youth justice statutes over the past decades including the Juvenile Delinquents Act (JDA), the Young
Offenders Act (YOA), and most recently the Youth Criminal Justice Act (YCJA). These changes in legislation have had a profound influence on the operation of youth justice organizations including the police, courts, corrections and probation services. Each of these Acts has dictated the way in which youth justice services have been conceptualized and implemented with some variations from province to province and/or territory. Research since the implementation of the YCJA has indicated that the new legislation has reduced the numbers of youth incarcerated and being formally prosecuted by the courts, but has had little impact on the use of probation as a sentence since 59 percent of youth found guilty between 2006 and 2007 received an order of probation as part of their sentence (Statistics Canada, 2008). Although these practices have changed dramatically over the years there is very little Canadian literature addressing youth probation; especially since the inception of the YCJA, as most of the literature has examined incarceration rates and sentencing practices (excluding probation). This oversight (e.g. lack of probation evaluation) has provided a plethora of opportunities to examine issues relating to the nature of youth probation such as its success in reducing recidivism, diverting youth from entrenchment in the criminal justice system, best practices, and most importantly (for the purposes of this paper) if and how the philosophy of restorative justice has had a positive influence on the nature of current youth probation practices in British Columbia.

With the recent shuffling of Ministries within the provincial government (e.g. the creation of the Ministry of Children and Families and its evolution into the Ministry of Children and Family Development), a new ideology for youth
justice has emerged. This new ideology is based on the belief that in order for youth, their families, and victims to be healthy, functional, contributing members of society, an integrated approach to social services is needed (Ministry of Children and Family Development, 2008). As such, the British Columbian government is attempting to improve accessibility to probation services, social services and mental health services by housing them collaboratively, thereby facilitating communication and ensuring the continuity of services. Many other jurisdictions have come to this conclusion and have instituted wide ranging reforms to their youth services divisions. Great Britain (especially Scotland) has introduced sweeping reforms in the areas of youth probation, social services and health services in an attempt to reduce recidivism, drug use, poverty, homelessness and extremely negative public opinions of the nature of youth in conflict with the law (see Burman, Bradshaw, Hutton, McNeil & Munro, 2006; Waters, 2007). In accordance with this, during the recent election in the UK all political parties publically endorsed restorative justice objectives (Restorative Justice Consortium, April 2010). It is safe to suggest that (outside of administrative issues) what most jurisdictions have found difficult to reconcile is the philosophy of restorative justice within a system of justice that remains largely retributive.

As there is a great deal of flexibility in the YCJA, in terms of the use of restorative justice measures, individual provinces and territories have the ability to be innovative in terms of their responses to youth crime while still adhering to the principles of the YCJA. British Columbia has the opportunity to familiarize
itself with the mistakes and failures of others (nationally as well as internationally) and improve their programming and implementation accordingly.

Historically, in British Columbia, probation services fell under the direction of the Ministry of Public Safety and the Solicitor General. The Ministry continues to oversee adult probation, parole and correctional facilities. When the Ministry of Children and Family Development was created in 2002, youth justice services, including youth probation and youth corrections, were transferred from the Ministry of Public Safety and the Solicitor General. To date, there has been no comprehensive evaluation of the success of youth probation services under the new administrative arrangements. Any positive or negative outcomes on youth, their families, probation officers, police officers, victims, courts and the community remains unknown and unexamined. One important change that has arisen, and caused difficulties for youth probation officers, revolves around opportunities for growth and leadership positions. This leaves many middle-aged probation officers with degrees in criminology or justice studies who have finally gained enough experience and seniority unable to take on management responsibilities to further their careers. These issues have remained unaddressed and the impact that these have had on the provision of services remains unknown.

Given the changes in both ideology and practice due to the Ministry reorganization and the implementation of the YCJA, it is critical that probation

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1 The Ministry of Children and Family Development now requires individuals applying for the position of team leader to have a social work degree (team leaders supervise social workers, youth probation officers and mental health workers within an integrated office).
services be examined and evaluated in order to determine their effectiveness. There are concerns from restorative justice supporters that these so called “restorative justice” programs and practices are distorting the true principles of restorative justice and without an overall change in the way crime is conceptualized, the true and lasting benefits of restorative justice will never be fully realized (see Zehr, 2002). As this ideology coincides with the implementation of restorative justice principles in the YCJA, the effectiveness of these procedures and policies is important to ensure public resources are being spent in ways that foster measurable, effective and positive changes. This is not to say that important research is not occurring in the field of Canadian youth probation, however much of it revolves around the use of risk assessments (see Meyers & Schmidt, 2008; Miller & Lin, 2007), the successes of diversion (see Maclure, Campbell & Dufresne, 2003; Barber & Doob, 2004) and public opinion and perceptions of youth justice (see Roberts, J.V., 2004).

The insertion of restorative justice principles into both the theory and the practice of youth probation in Canada remain unaddressed. Restorative justice is not a new phenomenon in Canada as it has been practiced by Aboriginal communities for decades and later by the Mennonite community in Kitchener, Ontario which founded the first restorative justice program in 1974 (Bonta, Wallace-Cappretta & Rooney, 1998). The inclusion of restorative justice principles in the YCJA can be considered the next step by the government to increase and formalize the use of restorative justice at all three levels of contact with the criminal justice system: police, courts, and corrections (including
probation). Examining the effectiveness of current probation policies and practices is paramount if we are to dissuade youth from engaging in inappropriate behaviours, while at the same time healing victims and communities, key components of restorative justice. The rise of interest in victims' rights has done little to influence or change the duties and responsibilities of probation officers as restorative justice continues to be implemented in ways that keep the focus on the offender rather than the victim. New responsibilities for victims of crime by probation officers are often viewed as laborious, uncomfortable and pointless. These feelings indicate a lack of understanding and disconnect between value-driven victim-focused restorative justice, and results-oriented, program-based, offender-oriented restorative justice.

It is important that the reader understand that the term "probation" not only includes youth who have been convicted of a crime and received an order of probation (a set of conditions imposed by the courts that must be abided by for a set period of time) as a punishment, but also youth who are participating in any number of other programs or sanctions (i.e., extra-judicial sanctions), which will be further examined in Chapter 3. It is partially due to the implementation of offender focused restorative justice programs that the modern day probation service finds itself performing many extra duties, some of which may be difficult to reconcile with the historically defined role of the probation officer which is to supervise and enforce court ordered conditions. These issues and others will be examined further in the Chapters to follow.
Chapter 2 contains a literature review that examines academic research on the intersectionality of youth justice, restorative justice and youth probation practices. The examination of academic studies in the literature review focuses on youth restorative justice initiatives, internationally, nationally and provincially. How these initiatives influence probation services and practice will also be discussed. The relationship restorative justice shares with school based practices and social programs inside and outside of the youth justice sphere are also examined.

Chapter 3 examines the creation of the YCJA and its relationship with restorative justice principles. This Chapter provides the framework with which to understand the current practices and policies which regulate probation practices. The Chapter also examines the connection between restorative justice principles and the theory and practice of probation. Current probation practices including extrajudicial sanctions, extrajudicial measures, restorative justice conferencing, case management conferences (ICM), restorative justice projects, victim notification, victim impact statements and probation officer autonomy are examined to determine how truly restorative they are. This section examines whether or not these programs adhere to the basic philosophies of restorative justice as dictated by Zehr (2002).

Chapter 4 offers insights into some of the challenges that B.C. Youth Probation Services may face in the future as they strive to implement restorative justice initiatives. These challenges include methodological, theoretical, and
practical obstacles. Suggestions will be made as to how B.C. Youth Probation Services might re-examine and revitalize their current practices.
2: LITERATURE REVIEW

The number of academic studies relating to restorative justice and youth justice has exploded over the past few decades with countries such as Australia, New Zealand and Canada leading the way. The Restorative Justice movement has gained considerable momentum and this momentum has coincided with rising concerns over victims’ rights. This has pushed restorative justice advocates to analyze, examine and theorize on restorative justice practices which were gaining popularity worldwide. What followed was two decades of research on restorative justice in a variety of contexts from victim-offender conferencing and mediation, to sentencing circles, and most importantly (for the purposes of this paper) its formal inclusion within youth criminal justice policy. The international rise in popularity of restorative justice will be briefly examined followed by Canadian, and finally, British Columbian movements towards the use of youth restorative justice.

2.1 Youth Restorative Justice Internationally

By the late 1990's the use of restorative justice had become so popular globally, that the United Nations released numerous guides outlining the proper use of popular restorative justice practices in regards to criminal matters. There were a number of highly public restorative justice processes taking place which encouraged and supported the need for these documents including (but not
limited to): the Truth and Reconciliation Commission of South Africa; the success of New Zealand's family group conferencing models; and the continuing success of a variety of Canadian led restorative justice initiatives including Aboriginal sentencing circles and Mennonite based restorative justice programs. Given the number of recent (and ongoing) atrocities committed in the last two decades including Bosnia, Rwanda, the Democratic Republic of the Congo, South Africa and Darfur, it has become apparent that modern criminal justice systems based on retribution and the rule of law are unable to deal with mass victimization and the root causes of these crimes, namely; poverty, racism, sexism, and religious differences. As Braithwaite (2002) notes, the creation of an international court to consistently and proportionately punish violators of international law is misguided and by demonizing selected individuals (thus exonerating the collective) there is little satisfaction and understanding for the individual victim (p.171).

In the aftermath of over 10 years of civil war, disillusioned citizens across Sierra Leone, in an attempt to heal their communities, created Fambul Tok. Drawing on ancient traditions and philosophies in regards to punishment, justice, equality and harmony, communities meet around a fire and openly discuss the tragedies with everyone in the community including victims and perpetrators (Fambul Tok International, 2010). By many accounts, citizens feel that their voices are being heard through this tradition (Fambul Tok, 2010). Although they may not be able to participate or share at the Truth and Reconciliation Commission they are fostering peace, forgiveness and understanding where it matters most: at the community, family and individual levels. How or if similar
restorative justice practices will be implemented within formal or informal criminal justice proceedings in an attempt to address these issues remains to be seen.

The United Nations Draft Resolution IV: Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice, recommended and encouraged the continuing use of restorative justice programs, alternative penalties (e.g. restitution and fines) and informal (outside the courts and in conjunction with victims, offenders and the community) ways of dealing with less serious offences (United Nations, 1999). In regards to youth, the draft resolution suggested that restorative programs and conferencing be available in a variety of contexts including schools, and for families in conflict (United Nations, 1999). During the creation of the Resolution, a number of delegates offered suggestions and relayed success stories of youth restorative justice programs that had been implemented in their countries as a means to reduce the victimization of children and offer alternatives to custody. What was agreed upon is that these programs need to be expanded and that best practices need to be disseminated in order to encourage other nations to take the rights of children more seriously (United Nations, 1999).

In 2002 the United Nations Economic and Social council adopted the Basic Principles and Use of Restorative Justice Programmes in Criminal Matters as a guide to encourage all member states to engage in, learn from and disseminate knowledge on the use of restorative justice (United Nations Economic and Social Council, 2002). In 2006 the Handbook for Restorative Justice Programs was
published by the United Nations, and was prepared by a number of restorative justice academics, advocates, and practitioners from across Canada and B.C. in particular (United Nations Office on Drugs and Crime, 2002). The handbook is an all encompassing guide which outlines everything from what restorative justice is, to how to run and evaluate a restorative justice program. Canada has played a large role in advocating for restorative justice internationally and what follows is a review of Canadian restorative justice initiatives.

2.2 Canadian Youth Restorative Justice Initiatives

Canada has played a significant role in the development of restorative justice programs and as discussed by Peachy (1989), the first official restorative justice program in Canada grew out of an experimental victim-offender mediation in Kitchener, Ontario between two young men who had committed a string of vandalisms. The mediation (suggested by a probation officer and approved by a judge with ties to the Mennonite community) was so successful that the Kitchener Victim/Offender Reconciliation Project was introduced (p.14-26).

In a more recent example of restorative youth justice, Stuart & Eakins (2003) undertook an evaluation of the Whitehorse Youth Justice Panel which was introduced in 2001 and focused on promoting the restorative justice aspects of the YCJA. According to the standards and guidelines for the Whitehorse Youth Justice Panel the aspects included: increasing referrals to extrajudicial measures; reducing court-processing time; reducing length of stay in remand; reducing custody committals; building partnerships; and enhancing family and
community capacities to repair harm (Stuart & Eakins, 2003). Stuart & Eakins (2003) evaluated this project based on its ability to meet the goals set by the Justice Panel, and its adherence to the restorative justice principles set out in the YCJA, through statistical analysis, participant observation, case studies, literature reviews and semi-structured interviews with stakeholders, victims and offenders. Stuart & Eakins (2003) found that the project did, in fact, increase referrals and reduce court processing times, as well as reduce open/secure custody admissions, build better relationships between youth justice organizations and, finally, improve the capacity of communities and families to work together to rectify harm. The program was less successful in reducing the length of remands in custody and the reduction in contact with the overall community (First Nations in particular) was concerning. Overall, the program was found to be successful and the decentralization of decision-making was found to be important to the continued success of the program (Stuart & Eakins, 2003).

What was clearly missing from the program was a mediation-based element which would bring victims, offenders, and the community together. This study demonstrated that with co-operation and a specific guiding principle or philosophy it is possible to promote restorative change within a predominantly adversarial system; however, there continues to be difficulties in altering what has become normative within this system, specifically the use of custody and the lack of victim and community involvement.
In Sydney, Nova Scotia, the Island Community Justice Society’s Building Bridges Project is a restorative based process which seeks to connect the community with a youth and their family pre-custody, custody and during the reintegration process (Department of Justice Canada, 2009a). The program aims to make the criminal justice process less isolating for the youth and their families while ensuring they are supported by community members through trained volunteers including a 1-1 worker (Department of Justice Canada, 2009a). What makes this process restorative is that during the youth’s reintegration phase they are referred to the Community Justice Society’s Restorative Justice Program and given the opportunity to meet their victim and make reparation if possible (Department of Justice Canada, 2009a).

The Island Community Justice Society is a community-based, non-profit organization that specifically addresses youthful offending through restorative processes including Family Group Conferencing, Victim-Offender Meetings, Accountability Meetings, and Sentencing Circles (Island Community Justice Society, 2009). All referrals come from police, courts, corrections or victim services. This particular restorative justice organization is unique in that it recruits volunteer community members to take part in a variety of the aforementioned processes. Its success is difficult to determine as there is no indication that a formal evaluation has taken place.

Calgary Community Conferencing (CCC) was created in April 1998 and is supported by Youth Probation Services/ City of Calgary, the Calgary Board of
Education, the Mennonite Central Committee, the John Howard Society, as well as being partnered with Calgary Family Services (Calgary Community Conferencing, 2008a). What makes this particular project unique is that all members of the partnership remain employees of their original organizations (Calgary Community Conferencing, 2008a). The members use their professional status as a means to bring together victims, offenders, and community members impacted by the offence (Calgary Community Conferencing, 2008a). For example, youth probation officers are able to make referrals as well as liaise between the courts, victims and offenders. Educational employees are able to provide school records, and additional support, and speak on behalf of the school community.

Although the program mentions community members taking part in conferences, unlike the Island Community Justice Society, there is no indication that Calgary Community Conferencing recruits community members beyond those who volunteer due to affiliations with the victim, offender, or professional memberships. It is also not clear whether members of all affiliations (e.g. youth probation, education, Mennonite etc.) take part in all conferences, or only conferences which relate to their professional status. Another unique aspect of this program is that referrals come not only from youth justice professionals (e.g., police, courts, corrections), but educational institutions as well (Calgary Community Corrections, 2008a). The organization does provide numerous evaluations of their project in partnership with the University of Alberta, and many of the studies indicate (although dated) that 30-40 percent of all referrals come
from educational institutions and that there is a high degree of satisfaction from
victims, offenders and conference participants on the process and outcome of
the conferences (Calgary Community Corrections: Research and Evaluation,
2008b). The program has yet to provide evaluations since the inception of the
YCJA and what, if any, impacts it may have had.

Restoring Justice in Rural Communities is a unique program founded in a
number of rural communities across New Brunswick by Chipman Community
Care Inc. (Department of Justice Canada, 2009a). This program recognizes that
dealing with youthful offending within a rural context often requires different
approaches to that of urban youthful offending (Department of Justice Canada,
2009a). It utilizes three main avenues for dealing with youthful offending
including: police cautions, cautions and conferencing and restorative justice
(Department of Justice Canada, 2009a). The program also asserts that it is an
alternative to the current criminal justice system and focuses on responsibility,
resolution, restitution and reconciliation with support provided by the community
in an attempt to address all the factors which may have contributed to the offence
(Department of Justice Canada, 2009a). Thus far in the review, this is the only
program that claims to be an alternative to the current criminal justice system.
Little detail is provided about this program and it is unknown whether or not there
has been any type of evaluation of its success as it is unclear whether an
evaluation has been performed.
The final groups of restorative youth justice based programs to be examined are also unique. There are a growing number of Aboriginal communities seeking to not only reclaim traditional restorative practices, but move beyond the current youth justice system and implement alternatives at all stages from police, to courts, and corrections. Some communities have adopted the First Nations Policing Policy (see Public Safety Canada, 2010) while many others have adopted alternatives to traditional court proceedings such as "Gladue Courts" (see Aboriginal Legal Services of Toronto, 2010). The following is an examination of two Aboriginal alternative youth restorative justice processes.

The United Native Friendship Centre in Fort Frances, Ontario operates a youth justice program available to first time, non-violent, Aboriginal and non-Aboriginal youth in the Fort Frances area (United Native Friendship Centre, 2010). Following the philosophy of restorative justice, youth must take responsibility for their actions and agree to take part in a Youth Justice Conference which consists of the youth, the victim and their supporters discussing the incident and coming to some sort of agreement (United Native Friendship Centre, 2010). What limits this program is that the youth must be referred pre-charge by the investigating police officer or post-charge from the Crown attorney, but only if the victim agrees to take part in the process; there are no options for those youth whose victims choose not to participate in a conference. The fact that only first time offenders are able to use the program severely limits its restorative application, as does the expectation that the
offender apologize for their actions. This program may be touted as restorative but many of the practices that are engaged in fly directly in the face of basic restorative justice principles. Information was not available as to the growth, expansion and future directions of the program.

At the Elsipogtog First Nations reserve in New Brunswick, the band council operates a federally funded alternative measures and community sentencing program for adults and youth who have committed a specified (usually non-violent) offence (Department of Justice, 2009b). What makes the Elsipogtog First Nations approach so unique is that they engage their elders, community members, and women in pre-charge healing circles as well as post-conviction sentencing circles (Department of Justice, 2009b). Like many approaches which are described as “restorative” the community felt that their approach was offender-focused and in 2004/2005 they introduced a Victim’s Assistance Program to support victims using community resources (Department of Justice, 2009b). Community members are encouraged to bring suggestions and concerns about Aboriginal justice to the Chief and Council and a community-policing program partnering with the Royal Canadian Mountain Police and Big Cove police services has been established (Department of Justice, 2009b).

The Elsipogtog First Nations restorative justice approach along with a number of other practices taking place across Canada were examined in a 2005 evaluation by the Department of Justice Canada (2007) to understand the impact
of the Aboriginal Justice Strategy\(^2\) on Aboriginal communities. What the study found, however, was that resources to support Aboriginal communities in regards to restorative justice practices were difficult to secure, the ability of some Aboriginal communities to take responsibility for justice measures was compromised, and research, statistics and evaluations of current measures were difficult to obtain due to high personnel turnover, differing jurisdictional reporting requirements and fluctuating resources (Department of Justice Canada, 2007). Restorative justice initiatives across Canada are similar in scope and methodology. The nature of these programs varies somewhat depending on the geographical location, resources available and communities served. Overall, it is clear that many provinces are attempting to adopt restorative justice initiatives with varying degrees of success.

### 2.3 Restorative Youth Justice in British Columbia

There are numerous restorative based initiatives active in British Columbia and many communities have some form of restorative process available. From Vancouver Island to the far North, the Province of British Columbia is arguably one of the leaders in experimenting with restorative based youth justice measures.

The Restorative Action & Youth Advocacy Association (established in 1998 and located in the small community of Chilliwack) is a volunteer based

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\(^2\) The Aboriginal Justice Strategy was implemented in 1996 to address the unique needs of Aboriginal Communities in regards to their overrepresentation in the criminal justice system (Department of Justice Canada, 2007). This is to be achieved through alternative form of policing, sentencing and increased community support which followed traditional Aboriginal healing philosophies (Department of Justice Canada, 2007).
organization that implements restorative justice as a form of alternative measures and an alternative to the formal justice system (City of Chilliwack, 2010a). The volunteers organize meetings between offenders and victims on the condition that the offending youth take responsibility for their actions and apologize for their actions (City of Chilliwack, 2010a). The offending youth is also expected to complete the resulting Resolution Agreement drafted from the meeting with their victim (City of Chilliwack, 2010a). This organization uses Community Justice Forums (similar to Family Group Conferencing) and, in cases where the victim chooses not to participate in a Community Justice Forum, a Community Accountability Panel (City of Chilliwack, 2010b). This organization chooses to use two different forms of restorative justice depending on the wishes of the victim. This follows the mandate of their organization which states they are to be victim-centered, offender focused, and community-driven (City of Chilliwack, 2010a). Like many restorative justice initiatives, the Restorative Action & Youth Advocacy Association is partnered with the RCMP as well as the BC Government.

The Abbotsford Restorative Justice and Advocacy Association (ARJAA) is a Community Accountability Program recognized by the B.C. Ministry of Public Safety & Solicitor General (ARJAA, 2009a). The ARJAA receives referrals in regards to children and youth, as well as police-referred cases involving neighborhood disputes (ARJAA, 2009a). Having close ties with government organizations can be limiting for restorative justice processes as, in some cases (such as this) all referrals must come from a police source. The Association is
staffed by professionals and community volunteers and also works with Abbotsford schools to deliver training in conflict resolution for staff, students, family and community members (ARJAA, 2009a). What makes the criteria for taking part in a restorative conference through ARJAA unique is that unlike most other restorative programs, which demand that the offender apologize for their actions, ARJAA requires that the youth take responsibility for their actions, accept that their actions were wrong and be willing to make amends (ARJAA, 2009b). Unfortunately there are a number of referring criteria which limits the use of restorative justice processes, including allowing first time offenders only, less serious offences only, and disregarding cases without identifiable victims. Restorative processes are mediated through two different forms: Community Group Conferences and Victim-Offender Mediation (ARJAA, 2009c).

The Richmond Restorative Justice Program is a program which is touted as a community policing initiative in partnership with the Touchstone Family Association as an alternative to the formal justice system (City of Richmond, 2010). The organization is focused on convening conferences, in the form of Community Justice Forums, between victims, offenders, and community members harmed by youthful offending (Touchstone Family Association, 2009). Referrals are made through the RCMP for children and youth (under or over 12 years of age) who have committed less serious offences (e.g. theft, mischief) (Touchstone Family Association, 2009). The program fails to mention if there are restorative options for youth if his or her victim declines to participate in the conference.
Saanich Community Justice Initiatives is a community policing initiative in partnership with the John Howard Society of Victoria and aiming to divert young offenders from the formal criminal justice system (Saanich Police, 2010). Like most restorative based programs, the Saanich Community Justice Initiative claims that the process revolves around the victim in the hope that the offender will be held accountable for their behaviour through dialogue and some form of restitution (Saanich Police, 2010). Three different processes can be engaged and they include Community Conferencing, Resolution Meetings, and Alternative Measures (Saanich Police, 2010). Referrals are made exclusively through the Saanich Police and offenders are required to admit involvement in the offence and agree to take part in one of the aforementioned processes (John Howard Society of Victoria, 2010).

The Nanaimo Youth Justice Initiative is a program administered by the Nanaimo John Howard Society in partnership with the Region and City of Nanaimo, the RCMP, the District of North Cowichan, the City of Duncan, Gabriola Island, School District 68, ICBC, and the Ministry of Public Safety and Solicitor General- Victims Services and Crime Prevention Division (John Howard Society Nanaimo Region, 2009). Referrals to this initiative are from a variety of sources including the RCMP, Crown Counsel, ICBC and School District 68 (John Howard Society Nanaimo Region, 2009). Community Justice Forums are the means utilized to bring together victims, offenders and the community to form Resolution Agreements that hold the offender accountable and restore the victim (John Howard Society Nanaimo Region, 2009).
There are also a number of Aboriginal based restorative justice programs revitalizing across the province. The over-representation of Aboriginal youth at all stages in the criminal justice system has led to a rise in traditional forms of justice which utilize community members including, victims, offenders, elders, friends and family, under an umbrella of healing, peacemaking and re-discovering their cultural identity. Many of these approaches are crafted with the expectation that eventual self-government will result in the return of responsibility for justice services to the community level (see Alkali Justice Program, 2010). Many of these practices also attempt to address the overrepresentation of Aboriginal people in the formal criminal justice system by providing traditional and more effective means of holding individuals accountable for their actions while helping to address the root causes of criminal activities.

The Wet'suwet'en Unlocking Aboriginal Justice Program (UAJP) was created in 1992 by the Wet'suwet'en First Nations located in Northwest British Columbia (Mirsky, 2003). Like most Aboriginal justice initiatives, the UAJP is a holistic approach to offending that accepts not only referrals from the RCMP, but community members, victims, and offenders as well as self-referrals (Mirsky, 2003). The UAJP focuses on support and prevention in an attempt to address issues which may later lead an individual to engage in harmful behaviours while the support component for both victims and offenders continues long after an agreement has been reached (Mirsky, 2003). This program utilizes not only voluntary conferences for youth (police referrals are generally for first time non-violent offenders) but camps and a variety of post-conference supports to
reintegrate victims and offenders back into the community (Mirsky, 2003). Sanctions and supports are decided on a case-by-case basis with all parties including community members, elders, families or victims and offenders all agreeing on the outcome of the conference (Mirsky, 2003).

The Qwi:qwelstóm Stó:lô Nation Justice Program is available to all of the Nations Bands as well as other First Nations living in Stó:lô territory (Stó:lô Nation, 2009). The Stó:lô Nation attempts to reconcile issues relating to unrest and discord amongst its residents through communication following traditions based on interconnectedness, relationships, consensus and healing (Stó:lô Nation, 2009). The process is not described in detail, however, when harmony is broken the elders gather the people together to discuss what has happened and come to an agreement as to the best means of restoring balance (Stó:lô Nation, 2009). Individuals, the RCMP, community services, the Courts, and fisheries can make referrals to the program and referrals are accepted as long as individuals are willing to take responsibility for their actions and the victim can be invited to participate and be kept informed of all communications regarding the proceedings and the final outcome (Stó:lô Nation, 2009). This approach allows all community members to take part in some capacity, as well as allowing all victims and offenders (there does not appear to be any limitations due to the nature or circumstances of the crime) to self-refer.

2.4 Issues & Evaluation

What becomes obvious upon examination of the numerous restorative justice initiatives taking place within Canada and British Columbia is that there is
a strong sense of standardization amongst many of the programs. Many of the initiatives follow the same recipe: first time young offender, minor criminal offence (e.g. theft, mischief, and vandalism), a referral from the police, a conference, meeting, or community forum, followed by an agreement. The requirements to take part may vary as well as the form of mediation, but the basic approach to addressing youthful offending through a one-to-one meeting between victims and offenders is standard. This approach fails to take into account the number of options and the extent of restorative justice philosophy locally and globally.

Standardization makes little sense for restorative approaches given that the needs of communities, victims and offenders can vary widely. Standardization in this case, has limited the number of youth who can access restorative based approaches, while providing little to no support for victims as many of these approaches remain offender focused. Standardization may be preferable for government entities in the hopes that it will make evaluations and the dispensation of funds and resources fair and equitable between programs but, overall, standardization meets the needs of the government, not the needs of the people. This brings into question the use of restorative justice as a “program”.

Many if not all of the initiatives discussed considered themselves restorative justice “programs”. Simply put, they are an alternative to the traditional justice system, although espousing the philosophy of restorative justice, limiting who can take part, what processes are to be utilized, and offering
little or no alternative to those who do not wish to take part (victims or offenders).

It appears as though restorative justice is being utilized as a tool for reducing police, court and correctional caseloads. If or when the time comes that restorative justice makes a significant impact on instances of crime and recidivism and the need for police, courts and corrections declines, perhaps the co-operation and support of police and courts will also decline. While being relegated as a "program" in partnership with the police and made available only to a select few, police and courts maintain their hold on the dispensation of justice and ultimately resources. The selectiveness and regimental guidelines of many of these programs also call into question the restorative nature of the initiative.

Many of the initiatives demand that only first-time non-violent offenders be referred for conferencing. This severely limits both who can take part in conferencing and the needs of victims. Victims involved in more personal threats are more likely to require community supports to heal and the benefits of a conference in these cases may be incalculable for the well-being of the victim and community members. Many of the organizations also demand that offenders apologize for their infractions. Forcing an individual to apologize contradicts the very nature of restorative justice. The process of understanding and feeling empathy is of course the ultimate goal of restorative meetings, but there should never be an expectation that the offender apologize; rather, remorse is a sign that the offender has learned from the process.
One of the most noticeable problems with many of the restorative endeavors is an overall lack of evaluation. Few of the organizations in Canada offered any information as to the success\(^3\) or outcome of their initiative. Community opinion, including participants' thoughts and feelings are often published as a celebration of the program's success, however there is a lack of any formal evaluation examining current practices, new trends, or ways in which the organization or approach could be improved to include a wider clientele. In some cases programs have developed and included referrals from school districts, however the reasons behind the decision to expand (or not) are not clear. Although it is difficult to define "success" in the case of restorative justice, simple evaluations which at least determine the satisfaction of participants, and statistics which measure the outcome of reparation agreements and recidivism, are basic building blocks from which to start.

Many of the Aboriginal based approaches have more unique and less standardized practices. These approaches often allow more individuals to take part and provide not only conferencing opportunities but sentencing circles and follow-up support to both victims and offenders. These approaches appear to be more holistic and community driven with community members feeling an obligation towards one another (including the victim and offender) to restore peace and harmony. The scope of the approaches also appears to be directly related to the degree of self government the nation has achieved. For example,

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\(^3\) Please note that the author is not defining "success" or what constitutes "success", but merely noting that there appears to be no attempt to examine what is being done and improve on current practices.
the Stó:lō Nation self-governs a number of areas including social service, justice, education, health services, and community development (Stó:lō Nation, 2009). They also address justice issues within a much broader scope than the United Native Friendship Centre in Fort Frances, Ontario, which is an amalgamation of a variety of Bands and Nations.

With academic studies supporting the use of restorative justice measures and the overall publicity that restorative justice has gained over the past few decades, it is not surprising that the principles and philosophies of restorative justice have been integrated into other areas. One particular area in which restorative justice has become prominent is within educational institutions. The principles and philosophies guiding restorative justice make it an appropriate and effective means of addressing issues facing schools including; violence, bullying (including cyber bullying) and drugs and alcohol consumption to name a few (Morrison, 2007, p.74).

2.5 Restorative Justice in Schools

According to Morrison (2007) many recent practices introduced in the name of school safety (zero tolerance, metal detectors, expulsion and suspension) are merely reactionary (or band-aid) solutions which fail to address the root causes of school violence, especially, bullying and alienation. Elementary schools in Waterloo, Ontario have implemented proactive policies to combat bullying. Funding was provided by the provincial Ministry of the Attorney General to train school staff, board members, health professionals and police
officers about preventative bullying techniques, and as a result of this training the “Imagine a School without Bullying” program was implemented in all elementary Catholic schools and most public schools across the Waterloo region (Hugh & Lynnea, 2004). A number of programs across the York and Kawartha Pine Ridge District School Boards, in Ontario, have also commenced with support from the municipal, regional, provincial and federal governments (Hugh & Lynnea, 2004).

Secondary schools in communities such as Surrey, British Columbia, have begun to understand and implement restorative practices due to the efforts of teaching professionals, families and the larger community. Staff at the Surrey District School Board were dismayed at the escalating levels of bullying, conflict and violence occurring on a daily basis and found that existing disciplinary practices were not effective in addressing the underlying issues (Hugh & Lynnea, 2004). Subsequently, four educators from the Surrey District School Board were introduced to the principles of restorative justice and trained as conference facilitators with the expectation that they would implement restorative practices (Hugh & Lynnea, 2004). As a result of their efforts, professional development days for educators now include: training in restorative justice; professional educators and student counsellors are trained as conference facilitators; conferences are now being convened following restorative justice principles; senior students are trained as peer mediators; and, in the case of one particular school, fewer repeat conflicts are being reported along with higher levels of satisfaction with the outcome of incidents (Hugh & Lynnea, 2004).
Although not all these practices are victim oriented, recognizing the harm caused and attempting to rectify it are basic principles of restorative justice and small steps towards changing the status quo. Morrison (2005), highlights programs such as the Resolving Conflict Creatively Program (RCCP), which seeks to teach elementary and secondary school students how to deal effectively with conflict through active listening, empathy, cooperation and negotiation (p. 40). Morrison (2005) also notes that in an evaluation of this program, consistency in teaching these skills is necessary to improve positive outcomes such as better performances on standardized testing, more inclusive classrooms, and less overall conflict.

It is important to remember that although educational institutions are focused on academic achievement and building knowledge, social skills including communication and behavioural development are practiced and enhanced. Some children may not be receiving proper instruction in regards to social development at home and come to school without the basic and necessary tools to function. The success of school-based restorative programs remains extremely important for youth justice practitioners. Attending school daily is a reality for most youth and what occurs at school can have a significant impact on a youth’s mental, physical and social wellbeing. It is important for youth probation officers to remain in contact with school officials in order to collaborate and problem-solve ways in which the youth can rectify conflict. For those youth who are not on probation orders, participating in restorative based conflict
resolutions through the school system may prevent the person from becoming involved in the youth criminal justice system.

2.6 Restorative Justice within Social Welfare Programs

Restorative justice is a way of looking at offending which is best described by Zehr (2002), as a violation of the relationships between individuals and the community. As such, restorative principles can also be a guide for use in everyday life. Wachtel (2003) discusses a variety of scenarios in which restorative justice has aided in the success of Community Service Foundations: group home settings in which staff performs “informal conferences” adhering to the layout and rules of conference but without the formality between youth or between staff and youth on a daily and on-going basis. Valuing and supporting the individual, while disapproving of the behaviour and attempting to change the behaviour by engaging in dialogue that explores the reality, thoughts and feelings of the youth and their victim, is a core practice of this program (Wachtel, 2003).

This is also the guiding philosophy of the Youth Horizons Program located in Surrey, BC which cares for sexually intrusive youth (Ford, J. personal communication, January 2008).

Accepting responsibility and negotiating honest and meaningful reparation is the goal of staff when addressing harm done to individuals by youth in care. This can take the form of meeting with the youth and a variety of individuals on the youth’s care team (social worker, guardian, probation officer, etc.) or with friends, family, and/or community members harmed by the youth’s behaviour. Contact between the youth and their victim is discouraged, as the youth has
often committed crimes against younger children including siblings (Ford, J. personal communication, January 2008).

Resorting to "formal" means of controlling the youths' behaviour is discouraged and viewed as a last resort, although these formal means of punishment (e.g., grounding, no television etc.) are available. If utilized, the youth always has the chance to earn back their privileges by demonstrating positive, pro-social behaviours and attitudes, which indicate that they comprehend and accept responsibility for their actions. Although this is of course the ideal, the implementation of these philosophies and principles awaits evaluation. Experience working within a restorative setting often highlights difficulties with the convergence of different philosophies; whether they be held by staff members, youth, or community members (such as, police officers, probation officers, and social workers).

These practices may not be recognized or labelled "restorative" by the individuals implementing them, however, the recognition of harm as existing between individuals and the community, which requires a collaborative and integrative approach, is a sign that restorative justice has moved beyond the criminal justice and educational systems and is viewed as a philosophy for repairing relationships and building communities in a variety of community and institutional settings.
2.7 Youth Justice, Restorative Justice and What it Means for Probation Practice

A review of restorative justice initiatives in a variety of contexts across Canada and the Lower Mainland suggest that probation services are, at best, on the periphery of providing support for community based restorative justice initiatives. Probation services have little to no direct responsibility for furthering restorative justice besides referring their youth to community programs which offer restorative justice services. As previously mentioned, many of the community accountability programs limit which youth can take part in restorative justice initiatives, which means that there is a large proportion of youth (especially second time offenders) being processed through the criminal justice system and receiving a term of probation with little or no chance of being referred to a restorative youth justice initiative. It is important for the Ministry of Children and Family Development to continue to provide restorative justice initiatives for those youth who do not qualify for community programs. Whether a youth is a second time offender, has committed a violent crime, or there is a lack of community resources, or the youth is unable to take part in diversion or restorative justice initiatives due to other considerations (e.g. addictions and mental health issues), all youth and their victims should be given the opportunity to resolve disputes through an alternate system based on the needs of the individuals most impacted by the offence.

This review has revealed that the role of probation in regards to restorative justice is complicated and undefined. There is no indication of the knowledge base of probation officers in terms of restorative justice, how often officers refer
youth to community or Ministry restorative justice services, their role in either initiative, and the thought processes and decision-making that occurs when a probation officer decides (or not) to refer a youth to an in-house restorative justice or community initiative. It would appear that there is an opportunity for probation officers to provide restorative supports, including conferencing, victim-offender mediation and restitution to those youth who do not qualify, or for a variety of other reasons are not referred by individuals, police or courts to a community organization.
Chapter begins with an examination of the YCJA's approach to youthful offending, including a number of new strategies including (but not limited to) a change in philosophy, additional considerations in determining sentences, and a variety of new sentences. Most importantly, the sections prescribing the actions and expectations of youth probation officers will be highlighted with a focus on sanctions and expectations. The mandate of the Youth Probation Service in British Columbia will also be discussed within the larger context of the YCJA. Probation Services practices will be examined with a focus on their restorative nature in an attempt to determine what is being done and how (or if) these practices are being implemented with a restorative justice philosophy in mind.

Preceding the implementation of the new youth criminal justice legislation, numerous studies (both academic and government funded) were undertaken in an attempt to influence the philosophy and direction of youth justice legislation. One of the most important developments in relation to youth justice policy over the past few decades revolves around the insertion of informal measures into formal criminal justice policy.

With the repeal of the Juvenile Delinquents Act (JDA) and the introduction of the Young Offenders Act (YOA) in 1984, a new era of youth
criminal justice policy began which focused heavily on the legal rights of youth (Department of Justice Canada, 2008). The YOA introduced the formal implementation of diversion (i.e., Alternative Measures) as ways to address youthful offending. Alternative Measures under the YOA required that the youth appear in court and then be recommended for the program as long as they met certain criteria including: taking responsibility for the offence; committing a non-violent offence; and being a first time offender (Carrington & Schulenberg, 2003). Informal diversion took place at the policing level where a higher degree of discretion was assumed by police officers. This discretion gave police officers a number of options when dealing with young offenders, including (but not limited to): taking no further action; issuing a formal or informal warning; involving parents; arrest and release without charge; or arrest and release without charge but with a referral to a local program (Carrington & Schulenberg, 2003).

Although the application of Alternative Measures was supposed to be the same across Canada, a study by Carrington & Schulenberg (2003), found that some provinces (such as British Columbia and Quebec) encouraged police to informally divert youth to an appropriate program rather than invoke Alternative Measures under the YOA. As a result, British Columbia and Quebec had the lowest rates of youth being charged or introduced to Alternative Measures (i.e. extra-judicial measures/sanctions) while Ontario and Saskatchewan had the greatest increase after the implementation of the YOA (Carrington & Schulenberg, 2003).
The restorative aspects of the YOA were limited and it was not until 1995 that signs of restorative justice in the form of victim impact statements were introduced into an amended YOA (Justice Canada Monitor, 2009). Most of the amendments to the YOA were punitive measures prolonging sentences of incarceration and extending penalties despite the research literature which overwhelmingly indicated that under the YOA there had been an increase in the number of violent crimes committed by youth, increased incarceration of young offenders, and, ultimately, an increase in repeat offenders (Justice Canada Monitor, 2009).

In a study by McCowan (1990), the probability of receiving a harsher disposition was more likely for youth between the ages of 13-15 under the YOA as opposed to the JDA. Academics such as Doob (1994), Carrington (1995), Corrado & Markwart (1994; 1995), published study after study which (more often than not) indicated that the YOA was not meeting the needs of youth in conflict with the law or their victims. At the same time, studies were being generated which supported and advocated for an increase in restorative justice based practices.

Continuous criticism, glaring problems and an overall lack of support for the YOA resulted in the consideration of new youth criminal justice legislation by the end of the 1990's. The Youth Criminal Justice Act (YCJA) was introduced in 2003 as a response to the harsh criticisms directed at the YOA.
3.1 Mandate

The YCJA, the provincial Youth Justice Act, the Ministry of Children and Family Development, the United Nations Convention on the Rights of the Child, and the Canadian Charter of Rights and Freedoms all influence Youth Justice Services in British Columbia (Government of British Columbia, 2009).

The Ministry of Children and Family Development (which includes Youth Justice Services) has based their practices on five key pillars: prevention; early intervention; intervention and support; the Aboriginal approach; and quality assurance (Ministry of Children and Family Development, 2008). These five pillars guide the practices of all staff in the Ministry including youth probation officers. The addition of Youth Justice Services to the Ministry demanded that multi-disciplinary, integrated approaches be taken towards youth. These approaches were necessary to ensure that Youth Justice Services adhere to not only the YCJA, but MCFD’s five pillars as well. Although this paper is not debating the success or appropriateness of this amalgamation, this is a topic which remains unaddressed five years after its inception.

Youth probation officers’ powers and directions come predominantly from the YCJA and the provincial Youth Justice Act. The Youth Justice Act in particular directs probation officers’ duties when supervising youth on probation orders. These duties include, ensuring that the youth keeps the peace and is of good behaviour, appears before the court when required to do so, reports to his or her youth probation officer when required, reports any change in address, employment or schooling to the courts, remains in BC, seeks and maintains
employment and/or attends school or other education or recreation program as
required, resides with a responsible adult, resides where directed and follows the
rules of the home and, finally, makes restitution to victims. In addition, probation
officers are also responsible for supervising an assortment of other conditions
including; geographical restrictions (i.e., no-go areas), counselling attendance
(addictions or mental health), weapons and drug restrictions, and community
service responsibilities (Department of Justice, 2002).

3.2 Legislation

The preamble of the YCJA makes it clear that the legislation is expected
to usher in a new era of youth justice which is focused on community
participation, victims and offender accountability. The preamble of the YCJA
explicitly states that its goals are to prevent youth crime by addressing its
underlying causes, to respond to the needs of young persons, and to provide
guidance and support to those at risk of committing crime (Department of Justice, 2002). The Ministry of Children and Family Development (MCFD) have also
adopted similar sentiments by seeking to address the needs of youth, family and
the larger community.

A number of new sanctions were introduced with the YCJA in keeping with
the restorative based themes of the Act and the collaborative mandate of the
Provincial Youth Justice Services. The following is a brief discussion and
explanation of these sanctions preceded by a discussion of the mandate of the
British Columbia Community Youth Justice Service which dictates the actions of provincial youth probation officers.

### 3.3 Sanctions

The scope of extrajudicial measures has grown with the inception of the YCJA and what began as an option for criminal justice professionals (especially police and the courts) has in many cases become either an expectation or routine practice. Part 1 (Sec. 4) of the YCJA (which outlines the principles and objectives for extrajudicial measures) clearly states that informal measures are the most appropriate and effective way to deal with youthful offending and should be considered enough to hold a youth accountable for their behaviour (Department of Justice, 2002). This practice has evolved and may now be used in cases where a youth has previously committed a crime and been found guilty or has already completed a previous extrajudicial measure or sanction agreement (Department of Justice, 2002).

Extra-judicial sanctions are utilized when a youth has committed a crime that requires a more serious response than extra-judicial measures⁴. Extra-judicial sanctions consist of the youth admitting their guilt in court, and convincing the court that their attitude and/or actions would not jeopardize the safety of the larger community if the youth were to complete a set of expectations (e.g. restitution, community service, apology letter, etc.). However, there must be enough evidence to prosecute the youth if they are unsuccessful in completing

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⁴ A typical extra-judicial measure can include a police warning, caution, or referral. Crown cautions may also be used in some jurisdictions (Department of Justice Canada, 2010). These actions would have been classified as Alternative Measures under the YOA (Department of Justice Canada, 2000).
their agreement. If the youth is successful in completing their expectations, they will not receive a youth criminal record. If the youth does not follow through with these expectations, which can include writing an apology letter, paying restitution, performing compensatory services, completing a conference, attending counselling, the youth can then be formally charged and prosecuted. The decision to implement extra-judicial sanctions rests with Crown Counsel. The youth probation officer is responsible for investigating a number of areas including the youth’s previous offending history, family history, substance abuse, associates and attitude towards the offence, for a report to Crown Counsel with recommendations as to whether or not the youth should be considered for an extra-judicial sanction. If the youth is successful in completing the required expectations, the criminal charge will be stayed and the youth will not face formal prosecution.

With the introduction of the Deferred Custody and Supervision Order (DCSO), the supervision responsibilities of youth probation officers have grown. A youth on a DCSO is supervised closely in the community as an alternative to custody. If the youth breaches his or her conditions they are automatically placed in secure custody for the remainder of their sentence. This was an important initiative meant to reduce the number of youths in custody, and to reduce the need to create a criminal record.

An Intensive Support and Supervision Order (ISSP) is an entirely new condition to probation orders that pairs the youth with a one-to-one worker. The community must have the resources to provide an ISSP worker, however, and for
many smaller communities this particular sentence is not fiscally feasible. A youth can be placed on an ISSP order for a maximum of two years which, after six months, should be reviewed by the courts as required by the YCJA (Department of Justice, 2002). The review will examine whether the youth has complied with his or her ISSP order, abstained from committing a new offence, decreased their risk/needs level \(^5\) and shown that a decrease in support and supervision would pose no increased risk to the community (Ministry of Children and Family Development, 2004). The youth probation officer is responsible for putting the youth in contact with an ISSP worker while continuing to monitor the youth with respect to their probation conditions. Ideally, the probation officer will keep in close contact with the ISSP worker in order to determine how successful the youth is in a number of areas which can include (but is not limited to); gaining and maintaining employment, completing community service hours, obtaining a place to live (if required), and finding and encouraging positive behaviours and pursuits. For example, ISSP workers will often escort youth to appointments and court dates. This not only provides support, but also ensures that the youth has transportation available to his or her appointments and is attending as required.

### 3.4 Conferencing

Another new condition that can be placed on a youth’s probation order is the requirement that the youth attend and participate in a restorative conference. A restorative conference can consist of the victim and offender meeting to

\(^5\) A youth given a probation order is required to take a Risk/Needs Assessment (RNA) which examines the risk they pose to the community and themselves, and the areas in which they require support. This will be discussed further later in the report.
discuss the offence and coming to a mutually satisfying conclusion. There can be some confusion with this particular condition because the wording suggests that taking part in a conference is mandatory. The wording on the orders is as follows “You shall attend, participate and successfully complete the Restorative Youth Justice Conference Program as directed by your youth worker and comply with any agreement that is reached” (Ackerman, 2008). A youth may choose to stop participating at any time and not follow through with any agreements made during the course of the conference with no legal consequences. For example, a youth cannot be in breach of their probation order because they failed to write an apology letter after they stated they would during a conference. A youth can be referred for a conference pre or post-sentencing, while in custody, or while participating in Extra-Judicial Sanctions (EJS). A finding (or admission) of guilt is mandatory before a youth is able to participate in the conference.

Although officials in the criminal justice system may recommend and refer a youth for a conference, including judges, Crown Counsel, defence counsel, Youth Justice Conference Facilitators, or youth custody workers, the responsibility falls most often on youth probation officers. The officer can explain to the youth what a conference entails and allow the youth time to decide whether they would be interested in participating. A youth could also be referred to the program if they do not already have a conference condition on their probation orders although this is highly unlikely and is something that will be touched upon in the next Chapter. Specially trained probation officers known as Youth Justice Conference Facilitators, are responsible for determining the
suitability of victims and youth, contacting the victim to ascertain their willingness and interest in participating, and preparing the youth, their family, the victim and anyone else who will be participating for the conference. The Restorative Justice Youth Conference Facilitator takes responsibility for organizing and holding the conference with support from the youth's probation officer who is usually invited to attend with the permission of the youth and the victim.

If a conference is unable to be convened due to offender or victim unsuitability or unavailability, the Restorative Justice Youth Project\(^6\) can be offered as an alternative. This consists of watching one of two videos (or both if the youth wishes) which follows the lives of a number of youth, their victims and the communities in which they live, where they have engaged in criminal activities and then participated in a restorative conference or other restorative program\(^7\). The youth is asked to either take a worksheet home, or work on it with the conference facilitator if they require assistance, and reflect on the video. The youth is asked to examine their offending behaviours and the impact their behaviour may have had on their family, the victim, and their community. The Project describes what restorative justice is and asks the youth to think how it could be applied to their situation. If the youth wishes, they are also able to write a restorative apology letter to their victim in an attempt to repair the harm they have caused. The youth is also encouraged to think of other ways in which they could help their victim to regain what they have lost.

\(^6\) This project was created by Restorative Justice Youth Conference Facilitators Pamela Ackerman and Debbie McKee.

\(^7\) Stolen Lives chronicles the lives of prolific car thieves in the Lower Mainland, while Burning Bridges examines the consequences for a group of young men who set fire to a historic covered bridge in their hometown.
In many cases, probation officers are unaware or uninterested in recommending youth for a conference; as a result, facilitators spend much of their time initiating contact with youth probation officers and soliciting them for cases. This disinterest may be due to a lack of awareness about the Youth Justice Conference Program (or the Restorative Justice Project), limited understanding of restorative justice, a belief that the youth and victim would not benefit from a conference (or project), or that the crime, youth or victim would not be suitable.

There are several other types of conferences which are considered restorative and fall under the scope of the YCJA. These conferences include: ICM (integrated case management); family-group conferences; community accountability programs; youth justice committees; victim-offender reconciliation; and Aboriginal sentencing circles (Hillian, Reitsma-Street & Hackler, 2004). The use of conferences varies from province to province to territory, as it is the responsibility of provincial governments and local communities to implement many of these programs. In British Columbia, Integrated Case Management Meetings (ICMs) and Victim-Offender Reconciliation Programs (VORPs) are the most popular forms of conferences (Hillian, Reitsma-Street & Hackler, 2004), with some communities offering Community Accountability Programs (CAPs).

In addition to sentences, the YCJA has also prescribed practices which seek to take into consideration the community's impact on youth offending as
well as the ability of the community to effectively heal itself. This is especially apparent in practices that focus on Aboriginal youth.

3.5 Current Practices

The YCJA has provided special provisions for working with youth of Aboriginal descent through an Aboriginal specific pre-sentence report, also known as a “Gladue Report”. A Gladue Report is a type of pre-sentence report that can be requested before an Aboriginal person is sentenced. The name of the report comes from a 1999 Supreme Court of Canada decision in which Jamie Tanis Gladue was convicted of manslaughter for killing her common law husband whom she suspected of having an affair with her sister (Judgments of the Supreme Court of Canada, 1999). The Supreme Court found that the lower courts had erred in their application of Sec. 718.2 (e) of the Criminal Code of Canada, which asks that the unique circumstances of Aboriginal individuals be considered during the sentencing process (Judgments of the Supreme Court of Canada, 1999). Because of this decision, “Gladue Reports” can be requested for any Aboriginal youth or adult, facing sentencing across Canada.

A judge can request a Gladue Report for any Aboriginal youth facing sentencing, although it is not mandatory. It is the responsibility of the probation officer to check with the courts whenever they receive a request for a pre-sentence report and the youth is Aboriginal. In keeping with the Gladue decision, the probation officer is asked to examine a number of areas when preparing the report. These areas can include: a description of the youth’s heritage (cultural background, customs and traditions), a description of the systemic factors which
may have contributed to the youth’s offending, a description of the youth’s community (including community issues such as poverty, substance abuse, unemployment, community breakdown), the nature of the relationship between the youth and his or her community, a description of the understanding of criminal sanctions held by the community and the justice processes utilized by that community to resolve harm, a description of community supports, and any Aboriginal sentencing options that may be available to the youth (e.g., sentencing circles) (Ministry of Children and Family Development, 2004). These reports tend to be burdensome to youth probation officers who are often working under full caseloads and may be required to travel in order to interview parents or guardians and community members.

Youth probation officers are also obliged to participate in other routine practices. The use of risk assessments continues to influence and inform a youth’s support program and in many ways contradicts the YCJA, which states that a youth’s punishment should be fair and proportionate to the seriousness of their offence. Risk assessments do not measure the seriousness of an offence or potential future offences; the potential to commit future crimes is not relevant to proportionality in sentencing according to Hannah-Moffat & Maurutto, (2003). In Canada, the YRNA (Youth Risk Needs Assessment) is used when a youth is assigned a probation order and is updated every six months thereafter. The assessment must be done within 30 days of the initial intake interview by the probation officer; however, youth participating in extrajudicial sanctions,
community work service, restitution, or on bail are not required to have a YRNA completed.

The results of the YRNA are used to track the risk and needs levels of the youth and aid in case management planning. The higher the level of risk and needs the more intensive the support and supervision should be, with a particular focus on needs that directly correspond with the youth’s criminal behaviours. It is assumed that the youth is experiencing some level of success if he or she scores progressively lower, or in some cases, maintains their score on the assessment. The YRNA has been designed as a tick box, yes/no, questionnaire that explores the youth’s prior criminal history, substance abuse issues, sexual offending, mental health, physical health, family history, school, and community. As noted by Hannah-Moffat & Maurotto (2003), one of the most important aspects of risk/needs assessments is the case management benefits they provide to professionals, although they are most often used to examine the likelihood of recidivism and not “how or whether these tools actually inform decisions about how to intervene with a youth” (p.15).

All of the aforementioned sanctions are of paramount interest to probation officers who are responsible for supervising, supporting and referring youth to a variety of CAPs (Community Accountability Programs) and other Ministry and non-Ministry services. In essence, the youth probation officer is the gatekeeper to many services. For example, a youth may have been given an ISSP sentence on their probation order but after more than six months on probation the youth may not have been referred to an ISSP worker by their probation officer.
Whether this is due to a lack of understanding about the program or a lack of community resources, the message being sent to the youth is confusing. Stability and boundaries, paired with support that has been created with the input of the youth, is critical if any meaningful outcome is expected.

3.6 The Results of Restorative Justice Initiatives in the YCJA

This final section will examine the impact of the restorative justice measures in the Act so far. With probation being the most frequently used sentence in youth court (Robinson, 2004), the implementation of the YCJA has had a profound impact on youth probation services.

Most analysts would agree that the purpose of the YCJA is multi-faceted. On the one hand, the Act encourages informal means of dealing with youth in conflict with the law by proposing less contact with the courts and a reduced use of incarceration for less serious offences. The YCJA also advocates for the use of extra-judicial measures, extra-judicial sanctions, consideration for youth belonging to vulnerable communities (Aboriginal communities in particular), community service, judicial and police warnings and reprimands, deferred custody and community supervision, restitution and a variety of less “punitive” and more community-based consequences. However, the YCJA also proposes the use of incarceration for more serious offences and advocates for the easier advancement of youth into the adult system under certain conditions (Department of Justice Canada, 2009c).

One early study, conducted a few months after the implementation of the YCJA and which examined new case law, indicated that the new Act stimulated
an immediate increase in community-based sanctions (Bala & Anand, 2004). Much of the supervision and management responsibilities of these community based sanctions have fallen on youth probation officers. Bala & Anand (2004) noted that youth probation officers were concerned that many of the youth participating in these types of sanctions (especially deferred custody and supervision) were not aware of just how onerous their restrictions and responsibilities were. This concern was valid as youth who are in breach of their orders (especially a deferred custody and supervision order) would most likely be arrested and placed in custody, thereby nullifying the purpose of the order which is to keep youth out of custody.

Sprott & Pulis (2005) examined the use, and proportionality, of probation sentences during the first year of the YCJA and compared it to data collected from 2001-2002 under the YOA (all data were collected from an Ontario courthouse so generalizations are limited). Sprott & Pulis (2005) found that probation sentences under the YCJA were slightly shorter and that with the implementation of the YCJA it appeared as though sentences relating to the administration of justice (e.g., a failure to comply with an order) were treated less harshly than under the YOA (pg10).

A more recent evaluation of the success of the YCJA five years after its inception conducted by Bala, Carrington & Roberts (2009) found, through an examination of police data and court statistics, that the rate of youth being imprisoned had decreased dramatically. For the first time, more youth were being dealt with through extra-judicial sanctions or extra-judicial measures as
opposed to having a formal charge laid against them. Interestingly, Bala, Carrington & Roberts (2009) found that of the 347 recorded cases utilizing Intensive Support and Supervision Orders (ISSPs) in the 2006/2007 year, 301 of the cases were from British Columbia. There could be a variety of reasons why British Columbia has embraced ISSP orders including a greater availability of resources, more liberal attitudes, or perhaps the large Aboriginal population that is more familiar and comfortable with alternative means of restoring justice and harmony within their communities. Research on this topic would perhaps help the Provincial Government to understand and improve the current use of ISSP orders as well as provide best practices for other provinces that have thus far overlooked or failed to realize the benefits of an ISSP order (assuming there are any of course).

Although there is general agreement amongst academics and practitioners alike in regards to its benefits and drawbacks, the future of the YCJA remains in question. Although the decreased use of custody and the increased use of alternative forms of dealing with youthful offending have generated positive outcomes, the future of these YCJA provisions remains unknown given the Federal Conservative Party's majority victory in the May 2, 2011, election and the introduction of the Safe Streets and Communities Act.
4: FUTURE DIRECTIONS FOR B.C. YOUTH PROBATION SERVICES

In order for restorative justice to be truly realized within the criminal justice system there must be a shift in the way crime and its effects on victims and the larger community are viewed. Although the YCJA and youth justice services suggest that practices which focus on resolving violations through discussion and atonement are best, it is clear that an integral part of a restorative justice-based system remains absent: the victim. The victim remains on the outskirts of the system and is often an afterthought in the process; merely a witness for the prosecution or, in the case of probation, a faceless entity who comes second to the needs of offenders.

In this Chapter, a number of suggestions will be made as to how the probation service can build on practices already in place while taking advantage of their autonomy to further restorative based practices. How restorative justice philosophies and practices can be incorporated into a primarily punitive and rights based model of justice will be explored. It would be impossible (and unwise) to attempt a fully restorative system which is also fraught with difficulties and challenges, but a dual-track model of restorative justice would be most appropriate and beneficial in terms of implementation and victim, offender and community satisfaction levels.

Responsibility for victims of crime is predominantly ignored by government and criminal justice professionals in our rush to punish. In the end, however, in
order for probation to become truly restorative it will require the efforts of everyone. Van Ness & Heetderks- Strong (2002) suggest a three-step process for implementing restorative justice:

1. …restorative justice advocates should propose broad changes that shift the focus away from criminal justice responses to crime and toward community solutions.

2. …reform efforts should move into a second phase in which the mission of the justice system itself is changed. This means that there must be substantial change in its goals and performance objectives, the messages it communicates to clients and to the public, and the methods it uses to accomplish its goals. Rather than program-driven policy and reform efforts, it would adopt value-driven priorities.

3. …this new understanding of the mission should give rise to new structures within the system-structures that are developed from the bottom up as the new values and mission are understood and applied by people working in the system. The interaction of staff within the justice system would move away from bureaucracies into a more participatory approach in keeping with the restorative values of the system. (p. 228).

One could argue that the first step in this plan is currently underway; however, the changes that are being made are not gaining the momentum they should. The introduction of Youth Probation Conference Facilitators is an
important step in the youth justice service, however only the youth justice service is aware of this. The larger community remains unaware and some youth probation officers, the gatekeepers of this resource, remain unaware of its existence or fail to understand the philosophy and benefits behind the practice. Current practices such as extra-judicial measures and extra-judicial sanctions (which reduce entrenchment in the system) need to continue, but criminal justice professionals must also consider the needs and wishes of both the victim and the larger community. Rather than having a pre-set list of options, conferences and/or mediations need to take place where individualized goal plans can be created taking the needs of the victim into primary consideration.

4.1 Future Directions for B.C. Probation Services

The examination of practices occurring across B.C. and the rest of Canada has indicated that there are a number of potentially promising and unique opportunities waiting to be adopted. As suggested by Van Ness & Heetderks-Strong (2002), a variety of suggestions need to be raised that rely on community responses to crime as opposed to criminal justice responses. The following is a short description of how B.C. Youth Probation can aid in this transition, a description of how probation services will fit into a restorative based justice system, and finally, a short discussion on some of the difficulties and obstacles these changes may face.
4.1.1 Implementing a Dual-Track Model of Youth Justice

Implementing a province-wide dual-track model of restorative justice would be a significant development for youth justice in B.C. A dual-track model of restorative justice can be described as a separate restorative system set up side-by-side with the current criminal justice system that allows for access to both systems depending on the needs of victim, offenders and the community. Its benefits, as described by Bianchi (as cited in Van Ness & Heetderks-Strong, 2002), allow for individuals afraid of violence and unsure of the ability of restorative justice to hold offenders accountable, to access the current justice system but also be given the opportunity to take a more restorative approach to sentencing (e.g., circle sentencing, and Victim Offender Reconciliation Programs) later in the process. Bianchi (as cited in Van Ness & Heetderks-Strong, 2002) also notes that having two separate yet connected systems should result in a power balance in that one system can keep an eye on the other resulting in less corruption and abuse of power. This is an ideal means of introducing, integrating and eventually normalizing restorative based principles and practices, which can later be expanded.

The dual-track model will also empower victims. Decisions concerning how best to proceed after a finding or admission of guilt will rest with the victim. The victim will have the chance to proceed through restorative avenues such as conferencing, facilitation, or sentencing circles, and ultimately receive some form of restitution.

Each community would provide and support a restorative justice initiative which could address the needs of victims and youth within their community.
These can be created based on the best practices of former and current initiatives provincially, nationally and internationally. By not requiring all initiatives to follow the same formula, communities can build their restorative justice initiative to address the unique needs of their community.

4.1.2 Returning Justice to Victims and the Community: A Framework

As previously discussed, there are a wide variety of frameworks currently implemented across B.C., Canada and all over the world. Fixing the limitations of these programs and ensuring they are all inclusive (all youth can take part regardless of issues relating to previous offending history, seriousness of crime, or referral issues).

One practice, which can better address the needs of victims, is the increased and continued implementation of community restorative justice initiatives that use sentencing circles. Victims (including the larger community) are given a chance to state their thoughts and feelings and the difficulties they have endured because of the offence, and contribute ideas as to how the offender can compensate the victim and community. When a youth is found guilty of an offence, rather than being sentenced by a judge in a formal court setting they would take part in a circle which would involve their victim, community members, their families or guardians, care team (social worker, probation officer, mental health worker etc.), and a judge. For a youth who is a first time offender an order of extra-judicial sanctions could still be imposed and the youth could meet with their victim, their probation officer and their family, where an agreement would be worked out and submitted to a judge for approval.
This type of informal sentencing circle would reduce backlogs in the courts as well as encourage individuals to be creative with forms of restitution meant to redress the victim, particularly in the areas of community work service, fines and apology letters.

Perhaps one of the most important changes that can be made is the presumption that all youth found guilty of an offence take part in either a restorative conference or a victim-offender reconciliation meeting. The appropriateness of one option rather than the other would be decided on a case-by-case basis; however, the key is that everything possible be done to ensure that some type of meeting between the victim and the offender takes place. Ideally, the outcome would result in a mutually satisfying agreement which would benefit all parties. This would require more professionals to conduct these conferences or meetings and could potentially increase the use of CAPs (Community Accountability Programs) in the Lower Mainland. If CAP programs were given the responsibility for conducting these types of conferences, this would free four to five youth probation officers to take on a full caseload of youth. This would also be beneficial in that although probation and youth justice services are becoming more restorative, a CAP program can provide a more independent restorative atmosphere and not be as affected by changes in Government as they are funded and controlled at the community level.

Perhaps one of the most ignored areas in the justice system continues to be support for victims of crime. This goes beyond financial support and includes psychological, as well as emotional support. Although changes have been
coming as a result of the work of the victim's movement (e.g., the creation of the Victims Bill of Rights and the introduction of victim impact statements) the needs of victims continues to be unaddressed and, as such, the likelihood of victims wishing to take part in restorative processes is reduced. A victim who does not feel as though police, Crown Counsel and other criminal justice representatives addressed their needs adequately is unlikely to show interest in putting more time and emotional energy into practices which they feel are focusing on the needs of the offender over their own. As such, the chances of victims seeking out opportunities to take a more active role in the justice process are severely reduced. This is an issue which must be addressed by all branches of the justice system but is particularly difficult for probation as probation services are not implemented until after sentencing.

One of the most important and urgent changes (one which will arguably reap the largest rewards) is the recruitment, acknowledgment, and opportunity for victims of crime to take a more active role in the justice system. Their roles currently remain limited to court attendance (unless of course they are a witness and unable to attend), impact statements, and the rare conference followed up with letters informing them of the offender's sentence, including the conditions of the sentence (if they are found guilty) and follow-up information such as, court or release dates.

A complete philosophical and ideological change which focuses on victims, harm and reparation as the three pillars of youth justice should be sought during the dual-track transition. This would open up opportunities for new and
innovative practices that are currently on the periphery to become standard procedures. This is where a dual-system of restorative justice would greatly empower victims. In cases where the offender accepts responsibility the victim has the choice whether to use a restorative form of sentencing, or the victim may decide to support the prosecuting of an individual who denies their actions with the support of restorative practices and the option of sentencing the offender in a circle if they wish. Although there is conflicting evidence as to the needs of victims, offering them the opportunity to engage with their offender and take part in the sentencing stage is a form of empowerment which can help victims regain a sense of control and importance.

Probation officers in their new roles as restorative justice workers can assess the degree of support required at the outset and revisit it at each stage in the process. This would ensure that victims who were only minimally impacted receive an appropriate non-intrusive or less burdensome level of support. This would ensure that the rest of the support worker's time is spent with victims who were more seriously impacted and require a higher degree of support.

4.1.3 Probation: From Alternative -to- Punishment to Alternate Punishment and Back

The concept of youth probation has the potential to be restorative. The way in which it is implemented and formalized within the current criminal justice system is not restorative, however. Historically, probation was the accepting of responsibility, by an individual, to supervise and support another. Probation was
an alternative to punishment and an opportunity for the youth to address issues that were prompting their offending behaviours.

In reality, when examining the conditions on probation orders, they are unenforceable in many ways and often set the youth up to fail. It is unrealistic to assume that a probation officer is able to accurately monitor many of the conditions that are currently attached to a probation order (e.g., abstain from alcohol, not being in possession of a knife except for the purposes of preparing food, not being in contact with specific individuals, and not being in a certain area). When a youth is in breach of their conditions it is more likely to be a police officer (or other official) who discovers the infraction rather than a probation officer. Probation officers generally breach youth for not appearing for their probation appointments, not abiding by their curfew, or not attending school or maintaining employment as prescribed.

Probation has become so normalized that it is difficult to picture a form of non-custodial supervision that will result in the same (if not better) management of young offenders. Yet many of the youth on probation experience difficulties at home which are often beyond the reach of probation officers.

Since many of the outcomes from a dual-track restorative justice model would result in some type of community based sanction, Youth Probation Officers (as Restorative Justice Workers) could act as a liaison between the community and the youth justice system, or within the community depending on the route

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8 Curfew checks are contracted out to non-profit agencies and are performed by youth workers, including ISSP workers. Probation officers receive a weekly, bi-weekly or monthly report. The officer may be notified earlier if a youth misses a proscribed number of checks (e.g. they are not home for three evenings in a row).
decided upon by the victim. Restorative Justice Workers can focus on supporting and supervising the youth while maintaining open communication with the community, and victims. In essence, the probation officer would become a youth worker as opposed to a probation officer. Supervising and supporting agreements made between, victims, offenders, and the community would fall upon the community as a whole (or its representatives) as power is dispersed throughout the restorative framework. With a reduction in enforcement duties, probation officers would be able to spend more time with youth and return to a support and supervision based workload. The restorative youth worker would work with victims, offenders and their families, supporting everyone equally through the process.

4.1.4 Education and Marketing

In order to encourage victims and the community to take a more active role in supporting victims and offenders through a dual-track model of restorative justice, a marketing and public education strategy on behalf of the Ministry of Children and Family Development must take place. Restorative justice should no longer remain the domain of academics and practitioners but should be aggressively introduced to the public through advertising campaigns and the recruitment of individuals who are in positions to lobby and effect actual and meaningful changes from within the justice system. Some information on the benefits and challenges of restorative justice are taking place through inter-governmental and stakeholder presentations, but public presentations introducing the principles and benefits of restorative justice must be introduced to
the public. Teaching alternative forms of “law” and “crime” should commence in Secondary School with conventional law classes by introducing basic philosophies on the nature of crime and engaging youth in critical discussions on alternatives to the traditional system.

The most important aspect of any education strategy, however, is that the correct and true meaning of the message be presented in such a way that it can be understood by everyone. In the case of restorative justice, the philosophy is often misconstrued as being religiously based and soft on crime. Simple terms such as forgiveness (which is a small part of restorative justice) can be misunderstood and presented as the ultimate goal and expected outcome in the process. For example, forgiveness may be presented in terms which suggest that if forgiveness is offered by the victim, what happened to the victim is acceptable or excused (Carter, 2008). This, of course, is not the case and although there is no one, correct, definition of restorative justice, some of the basic principles that are agreed upon by practitioners and academics alike should be introduced.

4.2 Challenges

Despite numerous studies that have supported the use of restorative justice philosophies and practices, a myriad of issues continue to plague restorative justice researchers and supporters alike. Many of these objections call into question the success of restorative justice initiatives based on methodological, theoretical, and practical grounds. Critics often characterize
restorative justice as a spiritually based approach to dealing with offending that is soft on offenders and potentially harmful to victims (e.g. Acorn, 2004).

4.2.1 Methodological Challenges

Governments and community organizations do not escape the need for evaluation, benchmarking and performance reviews. In order to assure taxpayers that the practices they are supporting fiscally are effective, some form of evaluation must take place. For restorative justice advocates, evaluation remains a problematic concept. What can or should be considered successful for a restorative justice initiative? Is it the failure to reoffend? Alternatively, is it victim satisfaction with the outcome? Or maybe the successful completion of a restitution agreement? The definition of success can differ depending on whom you ask. A government employee whose overriding goal is to see crime and recidivism decrease would be interested in what percentage of youths re-offend after taking part in victim-offender mediation. A conference facilitator evaluating their program may be more interested in how a victim felt post-conference. Did the victim feel as though their feelings, thoughts and opinions in regards to the offence and offender were addressed?

In terms of restorative justice initiatives, it would appear that there is no shortage of angles to evaluate, outcomes to examine and opinions to be codified and counted. As communities are collective entities that differ from one another, it is arguable that restorative justice initiatives within regions should be evaluated based on what the individuals who constitute the community are concerned with. There is no need to have a standardized measurement tool that deciphers which
approach is better than another; one initiative may be appropriate for one community, but not for another. This is not to say that evaluations should not be used to improve performance, but that they should be maps to examine what has been done, how practices have been improved, and what still needs to be examined. The grassroots mobilization of the community to take part in restoring justice contributes to the fluid sharing of information and ideas with support for trying new ways of achieving collective goals.

4.2.2 Theoretical

Van Ness & Heetderks Strong (2002) suggest that the most popular objections to restorative justice relates to the appropriateness and success of restorative justice when dealing with violent offenders, the identification of victims and offenders, the depersonalization of restorative justice, and individualistic and cultural issues (p.185). Without adequate evaluation, many of these so called drawbacks are more conjecture than evidence based.

Examining restorative justice through a gendered lens, Acorn (2004) noted that since women are disproportionately victimized and restorative justice advocates expect women to forgive their victimizers, restorative justice is simply another form of patriarchy. Although a gendered analysis is important to consider, what Acorn (2004) fails to understand is that restorative justice does not require (or even ask) victims to forgive their offenders. Restorative justice asks that offenders acknowledge the harm done to victims and the greater community, and work collaboratively in order to redress this harm; forgiveness is
not a requirement but an unexpected outcome. The positive and values-driven process the victim experiences is the real benefit of restorative justice.

4.2.3 Practical

There remain many complicated issues to be addressed with the institution of a more restorative based justice system. A few of the largest obstacles to implementing a community-based restorative justice initiative involve changing punitive, adversarial attitudes towards crime and justice, ensuring job security, bolstering favourable public attitudes, and redefining new and differing roles for traditional criminal justice professionals. Fiscal and resource related difficulties must not be forgotten in a time of economic instability and changes must be carefully mapped and assessed.

4.3 Revitalizing the BC Youth Probation Service with Restorative Justice

The very essence of probation leans toward a more restorative approach to offending. At its core, probation is the supervision and support of an individual in conflict with the law by a person who most likely believes in the notion that the majority of individuals commit crimes due to unfortunate circumstances (e.g., mental illness, poverty, and/ or addiction) and that these factors can be addressed with support. The belief that it is possible for people to change with the right support is the underlying philosophy behind probation practice and a reason why people are drawn to the service.
The youth justice system has a unique opportunity to engage victims as the general public remains sympathetic to the plight of youth and is more likely to take part in practices that they believe will be beneficial. Although many changes have occurred, the YCJA and current probation practices can be compared to what Wright (as cited in Van Ness & Heetderks-Strong, 2002) calls "authoritarian restorative justice" which can be characterized by decision making by courts and other criminal justice authorities that result in restorative based outcomes (e.g., restitution and community service) becoming punitive sanctions. This is true of the YCJA which has made CWS and conferences a condition of probation orders. Although these are voluntary, the wording on probation orders suggests they are mandatory and many probation officers will treat them as such. This type of restorative justice ignores the process aspect which is an important, if not the most important, component of restorative justice.

The new British Columbia Youth Probation Service will resemble a collective; all individuals will be offered the opportunity to play a role in the process and provide input into the solution. The responsibility to respond to criminal behaviours will fall to the community; which is comprised of individuals who have a vested interest in the safety, health, and well-being of their neighborhoods and public spaces. Individuals will be able to take an active role in supporting and supervising youth. From overseeing repairs to windows, to monitoring curfews, community members will be provided the opportunity to take an active role in teaching and providing youth with the skills and tools required to make positive changes to their behaviour. Most importantly, the consequences
will be meaningful, individualized, and carried out immediately, with the support of the community. More aspects of the criminal justice process will take place in community centres, libraries, and town halls, rather than in courtrooms.

This new probation service could continue to be administered through the provincial government; however, the roles of probation service members should evolve into one of case co-ordination, mediation, observation, and reporting/follow-up. All community members (especially victims) should be solicited for their input and their direct participation should be encouraged at every stage beginning with police contact. Continuing to integrate youth services is exceptionally important and increasing referrals to community agencies, outside of probation jurisdiction, is also important as a means of holding the community accountable. The responsibility for facilitating restorative justice becomes a joint effort between the community and the government. A dual-system would be the most efficient way to introduce true restorative justice principles to the public and begin the process of teaching communities how to cope with youthful offending through less formal methods. The probation service will be available to provide the restorative process, as well as more traditional probation services, depending on the wishes of the victim. This flexibility will provide the comfort of what is known, while introducing an alternative to those seeking more intimate and hands-on approaches to youthful offending.

Most importantly, everyone will be a part of this new probation service. From the youth, to their families, to victims and the community; everyone will play
a role. By removing the figurative community and victim, the true impact of crime can be discussed and remedied. Although the provincial government will continue to oversee the process, they will play a less centralized role. The victim and the community will have greater direct influence over the process and outcome of youthful offending within a supported framework. ISSP workers can continue to provide one-to-one support for youth and their roles can evolve into one of family support and guidance through the new restorative approach. A number of professional roles (e.g. probation officer) will need to evolve and grow along with this new approach to youthful offending. With the proper support, planning and execution, everyone will be prepared to work within this new framework.
5: CONCLUSION

Given that a complete ideological change in the way that crime is viewed is unlikely in the near future, there are adjustments that can be made to the current system which could elicit a number of positive and restorative changes in the management of youth justice. This is, of course, assuming that one believes that restorative justice is the most effective means of dealing with youth in conflict with the law. It has become obvious that the benefits of incarceration and punitive policies are limited and leave the needs of victims and the community unmet; which begs the question why not restorative justice?

This paper has assumed that restorative justice is able to make positive and lasting changes that better address the needs of victims, offenders and the community while taking into consideration current fiscal restraints, implementation issues and future considerations. This paper has also suggested that current practices, although not ideal, have the potential to be more restorative than is commonly believed. This paper does not suggest that an increase in youth probation officers is necessary, but that current officers be trained in the philosophy of restorative justice and encouraged to use their considerable autonomy to problem solve and engage with youth and victims in new and collaborative ways. This requires probation officers who are innovative and willing to constantly reassess their own approach while critically evaluating current practices and policies. Probation reform should not be left to
government, but should be a collaborative effort carried out on behalf of a number of stakeholders including, probation officers, offenders, victims and the community.

With the large number of successful restorative justice initiatives such as Embracing Bob's Killer (Slinger, 2007), and individuals committed to the principles of restorative justice, British Columbia has the opportunity to initiate a new paradigm of justice which will ultimately save money and result in healthier individuals, families, and communities. This transition will not be easy and is fraught with competing interests, many of which would be negatively affected by the transformation. As always, the most daunting task is that of managing potential job losses and finding financial support. Arguably, more jobs would be created, however the funding for these positions would be difficult to secure. A strategy is needed to identify the most receptive area within which restorative based practices can be implemented. With probation being the most popular sanction in the youth justice system, it should also be considered the most fertile area for research and reform. Since probation has taken up restorative justice more than most (if not all) other branches of the criminal justice system, it should be the leader in supporting other areas of the justice system in their attempts at implementing practices which better address the needs of victims, offenders and the community. Small, steady, planned and supported changes are required over the long term.
It is also important that the restorative changes which are implemented in the probation system (and the entire criminal justice system) are not autocratic practices that take away choice from both victims and offenders, and reduce the benefits of the restorative process. Although all restorative changes should be encouraged, it is important to clearly define and implement the changes within an appropriate restorative context. This will require co-operation, compromise and rigorous evaluation based on agreed upon value-based goals. Restorative justice faces many criticisms ranging from operationalization issues to definitions of success, and academics and practitioners must address these issues.

Creating a dual system is a potential way to introduce restorative justice to the mainstream in a manner that is non-threatening to victims, offenders and the larger community. Providing choices and an alternative to the current criminal justice system opens the door for new and innovative ideas to be given a chance. The current system is often rigid and inflexible while making small changes slowly and over a long period. The probation system has fallen into this pattern but also has the opportunity, flexibility, and autonomy to make more meaningful changes in a timelier manner.

It is easy to point out the flaws and difficulties with an approach to crime that is so radically different than the one we now hold. History has shown a slow (but arguably positive) progression in the way that communities and nations have attempted to address issues surrounding crime and victimization. In some cases, we have learned from our mistakes and made changes that have had a
positive effect on the perception and reality of safety within our communities. 

The future of restorative justice appears promising in Canada; however, it will take a number of dedicated individuals working within (and outside of) the criminal justice system to effect and further the gains made in areas such as policing and probation.
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