

**WHO OWNS RESTORATIVE JUSTICE?
EXPLORATORY INTERVIEWS WITH
RESTORATIVE JUSTICE PRACTITIONERS**

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ABSTRACT

Restorative justice challenges the notion that the effects of crime can only be resolved by professionals, and represents a shift in power away from state control to community control of justice issues. As a different way of doing justice vying for a place in relation to the mainstream justice system, tensions exist between theory and practice. Face-to-face, semi-structured interviews with people who occupy various roles in the field of restorative justice in the Lower Mainland explored how different actors see the tensions being addressed, exacerbated and/or resolved.

The sources of tension included questions regarding (1) what is classified as restorative justice and if standards should be adopted; (2) who gets to provide restorative services; (3) which service providers get to take which types of cases and at what stage in the justice process, and (4) the lack of adequate, stable sources of funding for restorative justice programs.

DEDICATION

I dedicate this thesis to my husband, who has been incredibly patient and supportive throughout this process. I love you, Andrew!

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TABLE OF CONTENTS

Approval.....	ii
Abstract.....	iii
Dedication.....	iv
Acknowledgements.....	v
Table Of Contents.....	vi
List of Tables.....	viii
Chapter One: Theory, Philosophy And Practice	1
Introduction.....	1
Diverse Factors Influence Growth Of Restorative Justice	3
Defining Restorative Justice.....	4
Who ‘Owns’ Crime?.....	8
Restorative Justice Enters The Mainstream Justice System.....	9
Questions For Restorative Justice.....	10
Chapter Two Literature Review	13
The Promise of Restorative Justice.....	13
Potential For Cooptation Of Restorative Justice.....	14
The Appropriation Of Aboriginal Justice Traditions	15
Role Of The Criminal Justice System	17
The Canadian Context.....	19
Funding Restorative Justice.....	22
The Role Of The Community	23
Chapter Three: Method	25
Research Question.....	25
Objectives	25
Participants	26
Interviews	27
Informed Consent	29
Analysis	29
Chapter Four: Results.....	31
Introduction.....	31
1) What Gets Classified As Restorative Justice?.....	31
Restorative Justice As ‘Buzzword’	31
The Importance Of Flexibility	33
Standardization	37
What Should Standardization Look Like?	39

Ministry Of Public Safety and Solicitor General Guidelines	41
Charter For Practitioners Of Restorative Justice.....	41
Formalizing Relationships: Agreements With Gatekeepers.....	43
2) Who Gets To Provide Restorative Justice Services?	44
Probation Officers Providing Direct Service	45
Community-Based Programs Providing Restorative Services	49
3) Who Gets What Types Of Referrals?.....	55
When In The Justice Process Should Restorative Justice Be Implemented?	65
4) Funding.....	70
Who Does Fund Restorative Justice Programs?.....	70
Municipal Governments	71
Provincial Government.....	72
Federal government.....	73
Implications Of Government Funding.....	74
Relationships With Gatekeepers	83
Chapter Five: Discussion And Conclusion.....	91
The Future Of Restorative Justice – Diverse Perspectives	91
The View From The Community	91
A System-Based View.....	93
Summary	94
Discussion.....	98
Strengths And Limitations Of This Research	106
Further Research.....	108
Appendix A Interview Questions.....	110
Reference List.....	112

LIST OF TABLES

Table 1 Diversity of Interviewees.....	28
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CHAPTER ONE:

THEORY, PHILOSOPHY AND PRACTICE

INTRODUCTION

The philosophy and practice of restorative justice offers an understanding of crime and justice that differs significantly from that of the adversarial criminal justice system. Rather than responding to crime as a violation of laws that requires the use of formal court proceedings to dispense punishment,

Restorative justice treats crime as fundamentally a violation of people and interpersonal relationships, the impact of crime as violations of people that create needs, obligations and liabilities, and the appropriate (restorative) justice response to engage victims, offenders and their communities to put right the wrongs (Mika and Zehr 2003:140).

The focus in a restorative response then shifts from an adversarial process of determining guilt and assigning blame to finding out who has been affected and how. As a result, instead of asking who deserves to be punished and for how long, seeing justice served becomes a question of how to repair the harm and prevent a similar event from happening in the future. As Zehr (2002) says,

The criminal justice system centres around offenders and deserts – making sure offenders get what they *deserve*. Restorative justice is more focussed on *needs*: the victims, the needs of communities, the needs of offenders (18, emphasis in original).

Restorative-based philosophies of justice are by no means new; they are rooted in ancient forms of justice and reflected in traditional practices of many indigenous peoples throughout the world (Umbreit 1999; Weitekamp 2002). However, the incorporation of

restorative processes into our present adversarial criminal justice system is a relatively recent development, and one that faces many challenges.

A fundamental principle of restorative justice is that private citizens be given the opportunity to be actively involved in the justice process. In practice this means that victims, offenders and their support persons are invited to participate in the process of finding a resolution to an offence, often with other community members functioning as coordinators of restorative programs and facilitators of those processes. Questions have been raised regarding the capacity and willingness of ordinary citizens to assume responsibility for justice issues, as well as whether volunteer coordinators and facilitators receive adequate training (Levrant et al. 1999). In addition, probation officers are now facilitating restorative process in British Columbia. This relatively new development raises questions about whether criminal justice system employees should facilitate restorative processes.

A second core element of restorative justice is the focus on grassroots, community-based responses. This emphasis on flexibility can empower communities to address justice issues in ways that, unlike the adversarial justice process, are uniquely tailored to the needs of that particular community. The result is that different communities interpret restorative justice in different ways; something seen as a positive reflection of diversity by restorative justice practitioners, but a threat to the principles of consistency and predictability that drive the adversarial justice system and the government ministries that fund restorative justice programs.

Restorative practices, as with any justice initiative, are influenced by the social, historical, cultural, legal, political and economic context within which they operate.

Programs often receive their referrals directly from criminal justice professionals and, as a result, are linked to the criminal justice system and affected by its policy shifts. Restorative programs also often receive their funding from government ministries. Government funding (although limited) is available to programs operating at certain points in the justice process, and this has shaped the face of the restorative justice movement in BC. In order to flourish *and* meet the goal of transforming assumptions about justice, restorative programs walk a fine line between being tied to the criminal justice system and government bodies and being autonomous. Woolford and Ratner (2003) suggest “if restorative justice programs hope to achieve this goal, they cannot be located entirely within or outside of the criminal justice system. Instead, they must move strategically between these two spaces” (190). With the growth in popularity of restorative justice approaches, finding this balance appears more important now than ever before for restorative justice programs in Canada.

DIVERSE FACTORS INFLUENCE GROWTH OF RESTORATIVE JUSTICE

Restorative justice has been described as a “practice-led theory of justice” (Roche 2003: 226; see also Ashworth 2002) and, as it has evolved through experimentation around the world, numerous models and approaches have developed. A number of diverse factors have created a context in which restorative justice practices are considered a viable alternative or supplement to the adversarial criminal justice system. In order to get a picture of where restorative justice is headed, it is important to be aware of its origins, as this knowledge can “give us some insight into the values, political roots and aspirations of those who advocate for restorative justice” (Cameron 2003:53). These include a loss of confidence in the criminal justice system (Weitekamp 2002), the ‘responsibilisation’ of the crime problem (La Prairie 1999) and the growth of the victims’ movement (Van Ness and Strong 1997). Daly and Immarigeon (1998) also suggest the recognition of prisoners’ rights and

alternatives to prisons; and the development of conflict resolution, victim-offender reconciliation, victim-offender mediation, victim advocacy, family group conferences, and sentencing circles, as the “major kinds of practices and political challenges that have given shape and substance to restorative justice” (24). The growth of restorative justice has also been influenced by academic research and theories including informal justice, abolitionism, reintegrative shaming, psychological theories, feminist theories of justice, peacemaking criminology, philosophical theories, religious and spiritual theories (Daly and Immarigeon 1998). The varied influences of restorative justice theory have contributed to the diversity of restorative justice practices.

In addition, it is imperative to recognize the contribution of Aboriginal cultures in the growth of restorative justice. Aboriginal models of justice are said to have influenced the development of restorative justice in the mainstream system (Cormier 2002; Department of Justice 2000).¹ As well, for Aboriginal peoples, these models of justice often have broader goals and expectations than those of proponents of mainstream restorative justice. As Rudin (2003) suggests,

the development of restorative justice programs is part of a reclaiming of the process of social control and order maintenance – a process that was explicitly taken away from Aboriginal communities during the period of colonization. In this way, the development of restorative justice programs by Aboriginal communities is very much a part of decolonisation – of reasserting the importance, vitality and significance of Aboriginal community control over Aboriginal people (10).

DEFINING RESTORATIVE JUSTICE

There are almost as many definitions of restorative justice as there are proponents of this approach. In fact, “critics often complain that advocates of restorative justice are vague

¹ This perspective has been criticized as not being sensitive to the distinction between the Western and Aboriginal roots of restorative justice (see Cameron 2003). This will be discussed further in Chapter Two.

about what it actually entails” (Smith and Vanstone 2002: 823). It is not a straightforward term to define as the following description of a program in Nova Scotia concedes,

Defining restorative justice can be elusive because it is a philosophical framework or a way of thinking about crime and conflict, rather than a distinct model or system of law. It goes beyond how we think about crime and conflict to how we think about ourselves collectively as a society (cited in Archibald 1999: 522).

Restorative justice has been described as an “umbrella term” that extends over a diverse number of practices (Shapland 2003: 197; see also Weitekamp 2002: 322; and La Prairie 1999: 141), including mediation, conferencing, victim impact panels, community accountability panels, sentencing circles, healing circles, and others. It has also been variously described as a new vision of justice (Van Ness 2003), a theory of justice (Roach 2000; Dzur 2003), a paradigm shift (Zehr 1990), and a social movement (Achilles and Zehr 2001; Daly and Immarigeon 1998; Woolford and Ratner 2003).

Some even question whether we *should* attempt to define it. Bazemore (2000) compares restorative justice to rock and roll to illustrate this point,

A wise man, Keith Richards of the Rolling Stones, once said that no one should ever think or write seriously about rock and roll. In saying this he realized that analysing something as energy driven and evolving as rock music could kill it. At times I believe that our efforts to define and categorize restorative justice run the same kind of risk...restorative justice is ultimately not about legal philosophy or academic discourse. It is primarily about the energy and emotional commitment of victims, offenders, and community members who have experienced the ill-effects of crime and choose to participate in a healing process...the discourse and practice of the restorative justice movement is in any case so fluid as to prohibit almost any generalization (459-60).

He goes on to qualify this statement by saying that although there are dangers to defining it, thinking seriously about restorative justice requires us to identify what we are talking about.

There is very little that can be considered inherently “restorative justice,” and so often it is easier to describe what restorative justice is *not* in order to clarify the meaning of the term. Zehr (2002) offers the following list:

- restorative justice is not primarily about forgiveness or reconciliation
- restorative justice is not mediation
- restorative justice is not primarily designed to reduce recidivism or repeating offences
- restorative justice is not a particular program or a blueprint
- restorative justice is not primarily intended for comparatively minor offences or first-time offenders
- restorative justice is not a new or North American development
- restorative justice is neither a panacea nor necessarily a replacement for the legal system
- restorative justice is not necessarily an alternative to prison
- restorative justice is not necessarily the opposite of retribution (8-13).

He suggests that restorative justice *is* concerned about the needs and roles of victims, offenders and communities (Zehr 2002).

Although restorative justice is a “capacious concept with multiple referents” (Daly and Immarigeon 1998: 22) there are also a set of core principles that it normally refers to, as suggested by Hudson and Galaway (1996)

Three elements are fundamental to any restorative justice definition and practice. First, crime is viewed primarily as a conflict between individuals that results in injuries to victims, communities and the offenders themselves, and only secondarily as a violation against the state. Second, the aim of the criminal justice process should be to create peace in communities by reconciling the parties and repairing the injuries caused by the dispute. Third, the criminal justice process should facilitate active participation by victims, offenders and their communities in order to find solutions to the conflict (2).

It is this third point that is of most concern to this thesis; in addition to attempting to repair the harm caused by crime, restorative processes should empower the persons directly affected by an offence to be the decision-makers in finding a resolution to the offence. These key stakeholders include victim(s), offender(s) and the community. The

philosophy of restorative justice advocates a flexible response in order to encourage the active participation of all of these stakeholders in a restorative process.

Key to bringing the philosophy of restorative justice to life is that the parties that are harmed by the act are invited to be involved in “heal[ing] what has been broken” (Sharpe 1998: 8). “The stakeholders must assume prominence, precisely because harm cannot be understood in a vacuum and, therefore, repair cannot be achieved in the absence of those most affected by crime” (Bazemore 2000: 465). As Mika and Zehr (2003) put it,

The primary parties affected by crime – victims, offenders, members of the community – are treated as key stakeholders...and are thus offered significant roles in the justice process. They need to be given information about each other and to be involved in deciding what justice in a particular case requires (140).

There are many ways that stakeholders can be involved. Dyadic dialogues assisted by a mediator can take place between a victim and an offender or larger dialogues can be arranged that include the affected community as well as the direct victim and offender. As long as the response seeks to repair the harm caused, and the victim and offender are empowered to choose for themselves how they want to be involved, a restorative response can also include options in which there is no direct communication between the parties. As Ashworth (2002) asserts,

In terms of restorative process, the keynotes are empowerment, dialogue, negotiation and agreement. Professionals should not be dominant: the voices of the stakeholders should be the loudest (578).

The orientation of a response is crucial; the theory of restorative justice advocates giving control back to the people directly affected by conflict, and this should be reflected in the practice of restorative justice. A more fully restorative model allows for the involvement of the various stakeholders in the restorative process, supporting the participants while

empowering them to come up with their own resolution. Consequently, programs with an authoritative application in which volunteers or staff members tell the offender the steps that need to be taken in order to repair the harm he or she has caused are a less restorative response.

WHO 'OWNS' CRIME?

The theory of restorative justice represents a powerful change in perspective from the adversarial criminal justice system in which the police decide whether an event warrants attention by the justice system; lawyers filter out information that is not legally relevant; a judge determines the consequence for the behaviour; and a probation officer or correctional officer ensures that the sentence is carried out. In this system the offender is a passive recipient of punishment and the victim's needs are not generally considered except in a symbolic way. As Van Ness and Strong (1997) suggest “[v]ictims suffer a perverse kind of double jeopardy, victimized once by the criminal and then again by the criminal justice system, that excludes them and their needs almost from the moment a crime is committed” (6).

In a restorative paradigm, the ‘experts’ – criminal justice professionals – are not the primary decision-makers; that responsibility is given instead to victims, offenders and community members. In effect, restorative justice is a challenge to the idea that conflict is the property of the state.² As Umbreit (1999) suggests “[t]he basic principles of restorative justice require a fundamental shift in power related to who controls and ‘owns’ crime in society – a shift from state to the individual citizens and local communities” (222).

² See Christie's (1977) influential article on this point.

RESTORATIVE JUSTICE ENTERS THE MAINSTREAM JUSTICE SYSTEM

“Outside of Aboriginal justice programs, which have operated in Canada since time immemorial, the modern era of restorative justice in this country is generally seen to have begun with initiatives led by the Mennonite Central Committee in Kitchener, Ontario, in 1974” (Rudin 2003: 1).³ Restorative justice began as a grassroots social movement characterized by community-based operations, with a strong reliance on volunteer mediators or facilitators.⁴ Non-governmental organizations and faith communities have been heavily involved in the advancement of (Western) restorative justice over the past 30 years (Cormier 2002). The movement has grown quickly and of late, restorative justice has started to enter the mainstream: awareness of restorative options is growing among the public and those who work in the criminal justice system; new federal youth justice legislation contains sections that could support the use of restorative alternatives⁵; and federal and provincial governments offer limited funding to agencies that provide restorative services. In addition, a growing number of criminal justice professionals are directly involved in the delivery of these services.

A patchwork of programs now exists across the country,⁶ the variety of which is staggering. Restorative processes are used in some communities to resolve neighbourhood

³ It should be noted that Victim Offender Reconciliation was seen at that time as one of many different “alternatives to incarceration” rather than a process model within the restorative justice paradigm. This served to limit its potential (Liz Elliott, personal communication October 13, 2004).

⁴ See Roach (2000) for a brief discussion of the rise of restorative justice in Canada.

⁵ The Youth Criminal Justice Act, which replaced the Young Offender’s Act in April 2003 is “written in a language that echoes the teachings of a conventional brand of restorative justice” (Woolford and Ratner 2003:182). Section 19 of the Act allows a youth court judge, a police officer or a youth probation officer to “convene or cause to be convened a conference for the purpose of making a decision required to be made under this Act” (YCJA s. 19). This has been interpreted by many as providing the incentive for greater use of restorative justice alternatives.

⁶ See <http://www.restorativejustice.ca> for a directory of just some of the restorative justice programs across Canada. See http://www.pssg.gov.bc.ca/community_programs/download/RestorativeJusticePrograms.pdf for a directory of some of the restorative justice programs in operation in British Columbia in 2002.

disputes or to address conflicts in schools. In other communities, instead of proceeding with a charge through the court process, minor offences are sent to a pre-charge restorative justice program. Restorative processes are used in other areas after a charge has been laid but prior to sentencing and in addition to the court process. They are also used following conviction as part of a sentence given by the court or after the court has sentenced an offender. Restorative processes are also used in labour relations or in civil or family law cases (Department of Justice 2000). Volunteers, paid community members, police, probation officers, and judges, facilitate restorative processes. Some programs operate under the auspices of large social service agencies like the John Howard Society or Elizabeth Fry Society or with the support of faith-based groups such as the Mennonite Central Committee, while others are offered by stand-alone agencies created specifically to do this work. Still other programs operate within the criminal justice system.

QUESTIONS FOR RESTORATIVE JUSTICE

Restorative justice is said to hold offenders accountable, assist in rehabilitation, prevent crime, address the needs of victims and rebuild communities; objectives that are not limited to one particular political party or philosophical perspective. As Dzur (2003) says,

Liberals are attracted by the humanistic, non-punitive elements of restorative justice and see in these a potential for broad social change. Conservatives, seeking more justice for victims, more responsibility for offenders, and less cost for communities, recognize the limits of contemporary criminal justice in securing these goals and lean towards restorative justice as a promising alternative (280).

While the widespread appeal of restorative justice can positively impact its growth, it can also pose a danger. As Roach (2000) says,

The multiple faces of restorative justice...makes it politically appealing for many constituencies. Proponents of restorative justice can range from prison abolitionists to criminal justice and corrections professionals, and everyone in

between. Restorative justice can be defended as a cost cutting measure and a form of privatization or as a vehicle for a local and communitarian politics of care. Restorative justice can be defended as a means of giving crime victims a central role in criminal justice and to hold offenders responsible for their crimes...The future of restorative justice will depend on what [sic] of its many public faces achieves dominance and how its multiple constituencies mobilize for and against it (268).

With the increased attention being paid to this field comes concern that the term 'restorative justice' has become trendy – a 'buzzword' that helps agencies and government ministries tap into funding sources without necessarily possessing an understanding of the values upon which the practice is based. Concern regarding the use of the term restorative justice has been expressed in the literature. For example, Mika and Zehr (2003) warn,

With the recent popularity of restorative justice comes the danger that the concept will be used so loosely and carelessly that it will be meaningless. The intuitive appeal of the term 'restorative' is the root of both its popularity and its potential misuse. Even worse, restorative justice may be simply a cover for – even an extension of – non-restorative and conventional punitive practices (136).

Johnstone (2002) suggests that in moving from the margins to the mainstream, the “internal tensions” of the restorative justice movement have emerged, and that the campaign is characterized by “diversity, difference and disagreement” (16). There are a number of questions that arise regarding the future of restorative justice. For instance, Bazemore (1997) asks

Does collaboration with formal justice agencies inevitably lead to cooptation of community justice models? Does independence from the formal system, on the other hand, equate to irrelevance? Is the court the 'enemy' of communities and community justice processes, or a vital participant in those processes? (211).

Van Ness and Strong (1997) ask “can community-based programs be linked with agencies of the criminal justice system without losing their restorative values?” (59). Who

provides restorative justice services? Who provides the funding for restorative programs? Who makes the decisions regarding access of victims and offenders to restorative processes? Who regulates restorative justice and how? What are the views of practitioners and government employees regarding the questions of who *should be* responsible for providing restorative services, supplying funding, deciding what can be referred to restorative justice programs, and regulating restorative practices? What differences in perspective arise when restorative processes are implemented in the context of a largely retributive mainstream criminal justice system? The goal of this thesis is to explore these issues by inviting people who occupy various roles in the field of restorative justice to share their opinions and experiences.

CHAPTER TWO

LITERATURE REVIEW

THE PROMISE OF RESTORATIVE JUSTICE

The adversarial criminal justice system has long been criticized for failing to fulfill its objectives of protecting citizens from crime, changing offenders' behaviour and addressing the needs of victims (Fattah 2002; Zehr 2002). It has been condemned for taking decision-making power away from communities and those directly affected by crime and conflict, and for alienating victims and offenders (Christie 1977), as well as for being exclusionary and ineffective (Pollard 2001). Retributive and rehabilitative responses to crime have been disparaged and, as Weitekamp (2002) asserts "what criminal justice systems need in times of growing complexity is: decentralization, de-formalization, downscaling, restructuring, de-specialization and decriminalization; or, in other words, a criminal justice system based on restorative justice" (323). Restorative initiatives are offered around the world,⁷ and are "firmly grounded in both practice and theory in critiques of criminal justice" (Olson and Dzur 2004: 143).

Participation in restorative initiatives is often promoted as a way for communities and individual citizens to gain control of justice issues (see Dzur 2003), but to what extent is this true? What role does the state play in restorative justice processes, and how much

⁷ According to Umbreit (2001) in the U.S. "all 50 states have restorative justice programs in some stage of development ... [and there are] over 1000 programs in 16 countries" (cited in Olson and Dzur 2004:139-140). Restorative justice reforms are a "prominent part of the criminal justice landscape in Australia, New Zealand, and Canada ... In Finland, 20% of the caseload is handled by victim-offender mediation programs. Victim-offender mediation in Germany and Austria handle serious adult offences" (Dzur 2003:280; references omitted).

control remains with communities and citizens? In this chapter, I will discuss the concerns expressed in the literature regarding the potential for cooptation of restorative justice, examine the role of the state in the delivery of restorative justice, and discuss some of the concerns with state involvement by using developments regarding Indigenous justice in Australia and New Zealand as an illustration of what could happen in the field of restorative justice. I will then examine the literature regarding the role of the community in restorative justice.

POTENTIAL FOR COOPTATION OF RESTORATIVE JUSTICE

There is optimism among proponents regarding the growth of restorative justice. However, there also are certain dangers that come with the increasing acceptance and subsequent formalization of restorative practices. Umbreit (1999) suggests,

As any reform moves from its early stage of development and attempts to become accepted and institutionalized, the probability of 'losing its soul' is increased. As the primary focus of the process shifts from offering an experience of healing and closure for those most affected by the crime to serving justice system goals, the initial passion and creativity of the movement can be quickly lost (214).

While restorative justice is compatible with a number of inclusionary criminal justice trends such as the focus on victims' needs brought about by the victims' movement, it is not compatible with other punitive trends such as the rise in incarceration as a response to crime (Roche 2003). One fear expressed in the restorative justice literature is that programs will be co-opted by the retributive criminal justice system. As Levrant et al. (1999) state "it seems prudent to consider the lesson of the anti-rehabilitation movement: Progressive sentiments are no guarantee that reforms will not be corrupted and serve punitive ends" (7). Roche (2003) cautions, "it would be most surprising if restorative justice programs were completely immune from these wider trends and the impulses which sustain them" (227).

THE APPROPRIATION OF ABORIGINAL JUSTICE TRADITIONS

Cameron (2003) suggests that “[m]any commentators, government policy makers and scholars conflate the Western restorative justice and Aboriginal justice movements, either seeing Aboriginal justice as the historical basis of Western restorative justice, or as a ‘type’ of restorative justice informed by Western justice” (74). In comparison to restorative justice, forms of Aboriginal justice may “focus more on the often spiritual process of healing and renewing identity than on actual acts of reparation” (Roach 2000: 273). Similarities have been noted between the two but as Roach (2000) cautions “Aboriginal forms of justice are diverse and care must be taken not to squeeze them into any mold, including that of restorative justice” (273). Cameron (2003) adds

The fact that Aboriginal peoples are not homogenous in their views of what constitutes and informs their visions of Aboriginal justice means that a single, universal definition of Aboriginal justice is neither possible nor desirable. It is, in fact, a consistent characteristic of Aboriginal justice that models are fluid, and conform to the needs of individual communities, and even a particular person (74).

Aboriginal control over justice issues can be seen as a way to “alleviate Aboriginal alienation from the mainstream justice system, to reduce the use of incarceration across the board, and to address the ongoing process of healing the effects of colonization” (Cameron 2003: 66). In addition, Aboriginal justice initiatives “are a part of a larger movement to assert control over governance functions” (Law Commission of Canada 2003: 27; see also La Prairie 1999). However, governments in Canada and New Zealand have been criticized for co-opting Aboriginal justice to serve their own ends rather than empower Aboriginal peoples.

In New Zealand, the *Children, Young Persons and their Families Act (1989)* introduced a form of restorative justice, “family group conferencing,” into the mainstream criminal justice

system. Although this development was ostensibly motivated by the desire to recognize New Zealand's cultural diversity (Hassell 1996), Tauri (2004a) suggests "conferencing represents precisely the type of 'twist' in judicial policy and practice one might expect as the State moves away from an openly assimilationist policy agenda towards one directed at the biculturalisation of Government 'corporate identity'" (7). He asserts that conferencing was one of a number of initiatives designed to promote "government officials, policy-makers and departments...as bicultural entities" (Tauri 2004a: 3) and that it signifies "the indigenisation of New Zealand's criminal justice system rather than the empowerment of the Maori" (Tauri 2004b).

Blagg (1997) suggests that the "discourse established by the Wagga model's appropriation of the Maori conference is Orientalist" (483). Tauri (1998) defines orientalist discourses as "powerful acts of representation that permit Western/European cultures to contain, homogenize and consume 'other' cultures" (483). Blagg (1997) asserts that these Westernized interpretations of Maori justice reform strip the process of its "history, context and internal structures of meaning" (484).

The hope for reforms of this type is that they will give some measure of control over justice issues back to the Maori people. This has not, however, proven to be the case. As Tauri (2004a) asserts,

One of the main criticisms levelled by Maori at current justice practices is the authority given to those defined as justice experts within the European system; namely lawyers, social workers, and police officers...the empowerment of European justice experts in comparison to Maori further perpetuates the situation whereby Maori justice practices and philosophies are under-utilised and maligned in comparison to European knowledge and expertise (7).

A Mohawk woman in Canada, Patricia Monture-Angus (1995) asserts that the recovery of Aboriginal justice traditions cannot be achieved by accepting the parameters the mainstream justice system is willing to provide, and that the indigenisation of the criminal justice system or the accommodation of Aboriginal people by the current system will not bring about change.⁸ She suggests that rather than repackaging Aboriginal thought, which results in the appropriation of Aboriginal experience, non-Aboriginal people need to articulate their own role in this process.⁹ She suggests that what Aboriginal people seek is the “acceptance that there can be more than one valid and legitimate way to address disputes and wrongdoings” (251), and expresses concern that Aboriginal justice is often wrongly equated to small pilot projects, diversion initiatives and sentencing circles (Monture-Angus 1995).

Some of the concerns of the Aboriginal justice movement are similar to those expressed by advocates of restorative justice. The appropriation of Aboriginal justice can serve as an example of what may happen when different justice traditions are repackaged for the mainstream justice system, and can serve as a warning to advocates of restorative justice.

ROLE OF THE CRIMINAL JUSTICE SYSTEM

Despite the growth of restorative-based processes in Aboriginal and other communities, some suggest the traditional justice system continues to be the “hub of dispute processing” (Law Commission of Canada 2003: 181). While this assertion is open to

⁸ She states “I do not want to be accommodated. It is a truly offensive suggestion” (Monture-Angus 1995: 259).

⁹ Monture-Angus (1995) recognizes the challenge that this might pose and states “I will leave it to non-Aboriginal people to express their difficulties at moving out of the way to allow Aboriginal people to have the space to create our path” (264).

question,¹⁰ the criminal justice system is undeniably called upon to address a wide variety of problems, and holds the vast majority of monetary and human resources as well as the bulk of the decision-making power when it comes to addressing acts labelled as 'criminal'. A large number of restorative programs work with police, probation services and/or the court in order to receive referrals. A challenge facing these programs is to maintain their focus because as they "seek to collaborate with system professionals, it becomes easy to lose sight of the underlying values and principles that motivated the individuals who initiated the program, and that serve as the foundation for the program's existence" (Umbreit 1999: 226).

A practical example of the different viewpoints is illustrated with respect to dissimilar positions on the following two questions: 'Who is the client of the justice system?' and 'Who should be the focus of intervention?' As Mika and Zehr (2003) assert,

Restorative programs claim to incorporate equally the needs and perspectives of both offenders and victims. However, the conventional justice process defines crime, its impacts and salience, and professional justice roles by reference exclusively to offending and offenders. Since most restorative justice programs must function within this criminal justice framework, they are easily distorted into offender-oriented programs (136-137).

When working with an offender-focussed system, restorative programs must be deliberate and conscious in their efforts to balance the needs of victims and offenders.

Although "one of the aims of the restorative justice movement is to replace forms of state justice for a wide range of offences and offenders" (Ashworth 2002: 578), most supporters of restorative justice do not deny that the criminal justice system has a role to

¹⁰ Van Ness and Strong (1996) suggest, "legal structures and ways of thinking about law are specific to particular times and places, and that in virtually all societies justice is pursued in both formal and in formal proceedings"(16; see also Weitekamp 2002; see also Hulsman 1981, 1982, 1986, cited in Bottoms 2003:84). La Prairie (1992) discusses the attrition of offences reported to the criminal justice system in Aboriginal communities, suggesting, "much of what happens on reserves by way of crime and disorder is not formally processed" (419).

play even in a restorative system. As Zehr (2002) suggests “[m]any feel that even if restorative justice could be widely implemented, some form of the Western legal system (ideally, a restoratively oriented one) would still be needed as a backup and guardian of basic human rights” (12). The criminal justice system must be available for those who contest the charge against them and require a trial process, as well as for those who choose not to participate in a restorative process. In addition, Weitekamp (2002) suggests, “we will have also to face offenders for whom the restorative justice approach will not work and who have to be incarcerated in order to protect citizens, communities and societies” (326).

Although the philosophy of restorative justice suggests that a restorative response can be appropriate even when an event is not defined as a ‘crime,’ criminal justice professionals refer many people to a restorative justice process after they come into contact with the system. Accordingly, while the philosophy and practice of restorative justice represent a challenge to the dominant way of doing justice, it may be necessary for proponents of restorative justice to work with employees of the dominant system. The challenge is finding criminal justice officials who are willing not only to provide space for a restorative process to take place but also to be proactive and make referrals to restorative programs. As Olson and Dzur (2004) optimistically assert, “if professionals can be a buffer between elites and citizens, they can also remove themselves as a buffer; if they can take tasks away from the public and immobilize civic action, they can give these tasks back and activate civic action” (149).

THE CANADIAN CONTEXT

In April of 2003 the *Youth Criminal Justice Act (YCJA)* replaced the *Young Offenders Act* as the federal legislation responsible for addressing offending behaviour by youth. This

legislation was met with optimism by some restorative justice practitioners due to its emphasis on the diversion of youth from the formal justice system, and the possibility it provides for some forms of restorative practice to be implemented within the justice system.

The *YCJA* contains new diversionary provisions called “extra-judicial measures,” which, if deemed adequate to hold the young person accountable, are to be used instead of court proceedings. This provision essentially formalizes police discretion by allowing police officers to deal with youth themselves or refer the youth to a program available in the community without a formal charge being laid. In BC, the restorative programs available to the police often originated from the Ministry of Public Safety and Solicitor General’s Community Accountability Program. The Ministry provides small start-up grants and minimal ongoing funding to volunteer, community-based programs to facilitate restorative processes in “relatively minor offences” (Hillian et al. 2004: 349).

More formal diversion provisions called “extra-judicial sanctions” are also available in the *YCJA*. Extra-judicial sanctions are similar to the alternative measures¹¹ provisions of the *Young Offender’s Act* in that they allow the Crown Counsel to divert a youth from the court process to be dealt with by a probation officer or recognized community program. The extra-judicial sanctions provision has the potential to provide a place where community-based programs could provide restorative services. However, in BC this has not proved to be the case as it is difficult to find adequate funding to operate such a program, and criminal justice system personnel are not able to support it with referrals. As Hillian et al. (2004) explains, because of

11 Alternative measures are a form of diversion from the court process. While the offences that are considered appropriate for referral vary from province to province, alternative measures generally are used for offenders who have committed less serious offences (La Prairie 1999).

significant cuts since 2001 in British Columbia to contracted programs...it is now policy that with the exception of some Aboriginal programs, all referrals for extra-judicial sanctions from the Crown will go to youth probation officers. Probation officers have in turn been directed by policy not to refer facilitation of conferences to community agencies, such as Community Accountability Programs, due to lack of specific contracts with such agencies to assure service quality (352).

The *YCJA* also allows for restorative processes to take place within the court process. Section 19(1) states that a youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker may convene or cause to be convened a conference for the purpose of making a decision required to be made under this Act. In BC there are 11 trained Youth Justice Conferencing specialists who are responsible for restorative conferences (Townsend, Jamison and Friesen undated).

Although it offers the prospect of greater involvement of community-based restorative programs, the *YCJA* leaves control over justice issues with mainstream criminal justice professionals:

The *YCJA*...attempts to place a greater emphasis on community-based responses to youth offending behaviour without interfering with the important areas of responsibility of judges and provincial and territorial governments. Thus, for example, there are a number of provisions that encourage the use of a range of pre-court screening and diversion options, but the new Act clearly gives the final responsibility for making decisions to police, prosecutors, and local agencies and does not give any youth the 'right' to seek diversion (Bertrand et al. 2002: 39-40).

Hillian et al. (2004) add, "[t]he conferencing provisions in [the *YCJA*] give proponents of restorative justice hope that new resources will be allocated to program delivery, but there are significant tensions between government and community members over their respective roles" (346).

The advent of the *YCJA* can provide some insight into the mode of operation of the government in relation to implementing restorative justice. In describing the discussions regarding the diversionary and conferencing provisions prior to the introduction of the *YCJA* Hillian et al. (2004) state,

[a] Conferencing Working Group, made up of representatives from the Ministries of Attorney General, Public Safety and Solicitor General, and Children and Family Development discussed and approved policy changes. There were various subcommittees and consultations with, for instance, the Community Youth Justice Advisory Group, comprised of youth justice consultants and managers from across the province (347).

It is noteworthy that neither community groups nor restorative justice practitioners were involved in these discussions. As Hillian et al. (2004) state,

Despite the effort towards a comprehensive and participatory policy development process, government bureaucrats were still the main drivers of British Columbia's conferencing initiative. The constraints of federal funding, provincial cutbacks, and overall government responsibility for the delivery of formal youth justice services limited the options from the start. There was little opportunity for community groups to challenge, for example, the explicit assumption that they should continue dealing with relatively minor offences at the extra-judicial stage as an alternative to court proceedings, while government staff take responsibility for more serious matters at the bail and sentencing stage (359).

FUNDING RESTORATIVE JUSTICE

Although legislation can play a role in encouraging the use of restorative initiatives, the most pressing issue for many community-based programs is access to funding. As La Prairie (1999) states,

The issue which is most likely to spell success or failure of these new initiatives to draw from the formal justice to less formal and less punitive sanctions, is whether there are adequate resources in the community to support them. If the resources are not in place...criminal justice responses...predicated on community involvement would seem doomed to failure (148-9).

Securing funding, particularly for operations, is an ongoing struggle and, due to the lack of alternatives, often requires reliance on the various levels of government. Consequently, while the philosophy of restorative justice promotes community responsibility and control and many programs strive for that, relationships usually must still be maintained with the criminal justice system in order to receive referrals and with the various levels of government to maintain funding sources.

THE ROLE OF THE COMMUNITY

We live in changing times in criminal justice. One of the most significant changes is the way in which 'community' is now a major player in justice and public and private 'partnerships' in justice are commonplace (La Prairie 1999:140).

La Prairie (1999) suggests that government "sharing of crime control responsibilities with private partners" came about "as a result of government awareness of its limited capacity to be the primary and effective provider of security and crime control but, at the same time, its recognition of the political risks of withdrawing from the 'sovereign state' role in criminal justice. One way to deal with this dilemma has been to create 'partnerships' with agencies, organizations and individuals which are quite outside the state and to persuade them to act appropriately" (140). While this emphasis on community involvement in justice issues could result in greater use of restorative initiatives, there are questions about the relationship between the community and the government. As Marinetto (2003) cautions,

Community involvement is now regarded as integral to good practice in policy circles...The idea of consulting and actively engaging citizens has not, until recently, been a common practice in mature industrialized societies. As a result, the endeavour of politicians and policymakers to extol the virtues of community involvement is worthy of some analytical scrutiny (104).

As one of the primary stakeholders in the justice process, involving the community in the resolution of criminal conflicts is a way of empowering the community, and

developing within the community the capacity to deal with crime and conflict (Johnstone 2002). While it is clear that the philosophy of restorative justice advocates community involvement, it is not immediately clear how to involve the community in justice issues, or even, in fact, *who* makes up “the community”. As Bazemore (1997) says “[c]ommunity is an amorphous concept that is unfortunately often used to obfuscate, rather than clarify, issues of citizen involvement in government-sponsored processes” (205). The challenge for restorative justice practitioners is to find meaningful ways to engage the community in the development and operation of restorative programs.

CHAPTER THREE:

METHOD

RESEARCH QUESTION

Differences of value and perspective arise when restorative justice is put into effect in the context of a largely retributive mainstream criminal justice system. The question that guides this thesis is how different actors in the contemporary world of restorative justice see the tensions identified in the previous chapter being addressed and exacerbated or resolved.

OBJECTIVES

The objectives of this thesis are exploratory. I wanted to know about the perspectives and experiences of practitioners in the field of restorative justice regarding the challenges they face when working with bureaucracies such as the criminal justice system and government ministries that operate under very different value systems. In particular, I wanted to find out how the respondents view these challenges and how they respond to them in the course of their work.

Given these objectives, undertaking face-to-face, semi-structured interviews with restorative justice practitioners was an appropriate method. As Kvale (1996) suggests “[i]nterviews are particularly suited for studying people’s understanding of the meanings in their lived world, describing their experiences and self-understanding, and clarifying and elaborating their own perspective on their lived world” (105). Although I wanted to ask about some of the issues identified in the previous chapter, my exploratory approach called for open-ended questions and a flexible attitude that allowed space for the issues to be

discussed at length, thereby giving participants the opportunity to offer their insights on issues they felt were significant in this area.

PARTICIPANTS

In order to present a multi-voiced account of the issues facing practitioners working in the field of restorative justice, I sought to interview people with a wide variety of backgrounds occupying different roles in this area.¹² This sort of sampling for diversity – seeking a range of perspectives in a number of settings – is consistent with an exploratory approach (Palys 2003). Palys (2003) suggests exploratory research involves “*strategic* sampling of insightful informants,” and that often the “ideal informant is someone who is either very *familiar with* or very *new* to a situation” (74; emphasis in original). The respondents in this thesis include people who have years of experience in this field as well as people who are just starting out. The task of identifying an appropriate target sample was aided by the fact that, prior to returning to school to pursue a master's degree, I worked as the coordinator of a restorative justice program in the Lower Mainland area of British Columbia. This experience helped me to identify twelve people in the region who had varied backgrounds, operated under an array of circumstances and could bring views from different vantage points within the system.

The participants varied in terms of the restorative model they followed: some used victim offender mediation processes, while others would call their approach “family group conferencing.” One uses a scripted model, and still others de-emphasized the model they follow and stressed the importance of flexibility in their processes. I sought people who

¹² While the majority of people I approached were willing to talk to me, a few did not reply to phone or email messages. I do not know whether these potential respondents were unavailable or not interested in participating.

work with different client groups including youth, adults and Aboriginal peoples, and practitioners whose programs take referrals at different points in the criminal justice system, including pre-charge, post-charge diversion, post-charge pre-sentence and post-sentence. I also spoke with one practitioner who takes referrals from schools without the involvement of the criminal justice system. The location of the respondents is diverse: some have offices in the community, others work out of probation offices and still others are housed in police detachments. In addition to interviewing practitioners, I spoke with representatives of two government ministries who are involved in this area. All programs included in this study are set in predominately urban areas, and the practitioners that I spoke with were all paid staff members.¹³ It is worthwhile to note that some of the programs that exist in BC and across the country are completely volunteer-run. Table 1 shows the diversity of those interviewed.

INTERVIEWS

After a brief discussion of the ethical issues of the study and a short introduction of my area of interest the interviews began with an open-ended question such as “Is there anything that immediately comes to mind when it comes to tensions between the philosophy of restorative justice and the practice of restorative justice?” Beginning in this open-ended manner encouraged participants to talk about what was most important to them. I prepared a list of questions around various themes for each interview (see Appendix B) but did not follow these rigidly, focusing instead on what the participant had to say and following up on those areas that seemed to be congruent with my topic. The questions varied interview by interview based on the knowledge, experience and interests of the respondents.

¹³ Although all respondents are paid for their work, some are only in part time positions, others are responsible for running other programs in addition to the restorative program and others work full time as restorative justice coordinators.

Table 1 Diversity of Interviewees

POSITION OF INTERVIEWEE	FUNDING SOURCE	TYPE OF MODEL USED	OFFENDER AGE	LOCATION OF PROGRAM	REFERRAL SOURCE
Coordinator	Municipal Government, Community Accountability Program	Conferencing	Youth	Community	Police
Coordinator	Ministry of Children and Family Development, Community Accountability Program	Victim Offender Mediation	Youth	Community	Probation
Conferencing Implementation Consultant	Ministry of Children and Family Development	Not Applicable	Not Applicable	Province-Wide	Not Applicable
Coordinator	Municipal Government, Community Accountability Program	Flexible Conferencing	Youth, Adult	Police Detachment	Police
Conferencing Specialist	Ministry of Children and Family Development	Conferencing	Youth	Probation Office	Judges, Probation
Conferencing Specialist	Ministry of Children and Family Development	Conferencing	Youth	Probation Office	Judges, Probation
Coordinator	Federal and Provincial Government	Community Council Forum	Youth, Adult	Community	Crown Counsel
Coordinator	Municipal Government	Counselling, Conferencing	Youth	Police Detachment	Police
Executive Director	Municipal Government, Community, Community Accountability Program	Community Accountability Panels, Conferencing	Youth	Police Detachment	Police
Co-Director	Provincial Government	Victim Offender Mediation/Reconciliation	Children, Youth, Adult	Community	Schools, Crown Counsel, Corrections
Contractor	Not Funded	Conferencing	Children under 12, Youth	Community	Police, Schools
Community Programs Division	Ministry of Public Safety and Solicitor General	Not Applicable	Not Applicable	Province-Wide	Not Applicable

INFORMED CONSENT

Informed consent involves letting participants know the overall purpose of the research project as well as the main features, possible risks and benefits (Kvale 1996). Before agreeing to participate, participants should be provided with “honest and complete information regarding what their participation will involve” (Palys 2003: 89). I discussed with each participant the risks of participating including the possibility that, due to the relatively small number of people working in this area, their identity may be evident to someone who has knowledge of the field of restorative justice in the Lower Mainland. I let each participant know that they could withdraw from the project at any time, and that they also could withdraw any of the responses that they made during our conversations.¹⁴ Returning the transcripts to the participants and inviting them to contact me if they had any concerns had the effect of creating a dialogue regarding consent and built rapport by showing respondents that I was interested in getting it right and that I would respect their concerns.

ANALYSIS

I transcribed each interview within a few days of the conversation and conducted my analysis based on the transcripts. I began my analysis after the first interview and used what I learned at each subsequent interview to clarify the questions for the next. I read through each transcript, coding it both for concepts that appeared to be important to the respondent and for concepts that were related to the ideas that I was interested in. As Kirby and McKenna (1989) advise, I engaged in “hurricane thinking,” creating charts for each interview

¹⁴ Several of the participants requested that the tape recorder be turned off at times during the conversations. These requests were honoured and the topics discussed during the time the recorder was off were not included in this thesis. In addition, a few respondents requested that certain comments that they made that were recorded be excluded. These requests also were respected.

mapping out the concepts and the connections between them in order to understand links between categories. I also created index cards with each concept as a heading and details following. After completing all of the interviews, I was able to use these index cards and charts to create flow charts for each of the issues that emerged. Kvale (1996) cautions against promoting a “reifying analysis,” something that happens when the researcher forgets that transcripts originally were conversations (182). I dealt with this concern by continually going back to the transcripts while working with the ideas, as well as by recalling the way in which the words were said and examining the context surrounding the relevant comment.

CHAPTER FOUR:

RESULTS

INTRODUCTION

Tensions exist between theory and practice when a different way of doing justice, such as restorative justice, tries to find a place in relation to the context of the mainstream adversarial criminal justice system. Generally speaking, the sources of tension that surfaced during the interviews were questions regarding (1) what gets classified as restorative justice and whether standards need to be adopted to limit those practices that can be considered 'restorative'; (2) who gets to provide restorative services; (3) which service providers get to take which types of cases, and at what stage in the criminal justice system, and (4) concerns regarding the lack of adequate, stable sources funding for restorative justice programs. I will address each of these in turn.

1) WHAT GETS CLASSIFIED AS RESTORATIVE JUSTICE?

The practice of restorative justice is growing. Many criminal justice professionals and community members alike want to be involved in the implementation and delivery of restorative services. However, according to many of the interviewees its success may be its greatest vulnerability as the term "restorative justice" risks becoming a meaningless catchphrase.

RESTORATIVE JUSTICE AS 'BUZZWORD'

The philosophy of restorative justice is broad, inclusive and non-restrictive in terms of how restorative resolutions can be achieved. Consequently, many different practices can

be classified as restorative depending on the needs and desires of the community in which they are employed and, for this reason, restorative justice appeals to a wide variety of people. Good intentions and the commendable desire to offer a community-based response may be the motivation behind many programs, but there is trepidation among practitioners that in some cases a thorough understanding of restorative justice principles does not support these intentions. In the words of one participant,

[Restorative justice is] becoming more mainstream so there's a lot of people that are starting to get involved. It's still very community-based but because restorative justice is becoming that hip word...there's a lot of people that don't necessarily know what it means but they're trying to start programs in their community...but not always having the knowledge (1:1).¹⁵

Further, due to the popularity of the term and the fact there is no definitive definition of what restorative justice is, when programs describe themselves as restorative, it is not always clear what they mean. As one participant said,

Restorative programs are a dime a dozen and there are lots of definitions and whole different...value sets...so it's become a difficulty to describe your program as restorative because it's become a kind of Alice-in-Wonderland muchness (9:5).

Given that aspects of restorative justice can appeal to a spectrum of political beliefs, there is also the fear that some programs that use the term "restorative justice" may interpret it in a punitive way. One respondent observed,

I went to a meeting of restorative justice groups...and most of them seemed pretty good but there were a couple that I thought were the 'hang-'em-high' crowd that had basically got themselves a program to run (10:47).

¹⁵ I assigned a number to each participant and numbered each response when transcribing the interviews. Henceforth, the abbreviation that I will use to distinguish the responses is: (Participant #: Response #). For example, (1:1) refers to Participant #1, Response #1.

The label given to a restorative program is important as it contributes to how that program is perceived, and should reflect what it does. One respondent went so far as to say programs should not be called “restorative justice” if they are tied to the criminal justice system, and that it would be “cleaner if we said we were a youth diversion program that supports restorative values” (3:52). Another participant echoed this by taking exception to a program that included the word ‘community’ in its name, as the program does not accept referrals from the community. She felt that the inclusion of ‘community’ in the program title misrepresented the work done by that program. This person would not describe the program as a restorative justice program but would say that it operates according to restorative philosophies.

THE IMPORTANCE OF FLEXIBILITY

Restorative approaches attempt to humanize the criminal justice process with the ‘requirement’ that the process adjust to accommodate the uniqueness of each situation. Many of the participants emphasized the need for a flexible response but defined that in different ways – having various program models available; adjusting the process to meet the needs of the participants; or designing the program to meet the needs of the community in which it will operate. However, the desire for flexibility complicates matters when it comes to the question of whether standards should be implemented for restorative practice. Respondents were clear that “being flexible” should not mean “anything goes.”

One respondent defined flexibility as having different models available to offer greater choice to their referral source, as well as to enable the program to respond to diverse types of crimes. For example, one program offers a conferencing model when there is a victim who is willing to participate, but employs Community Accountability Panels in cases

where there is no direct victim or the victim chooses not to be present.¹⁶ One such case involved a victim whose car was broken into while she was visiting her husband in the hospital. She did not want to attend a conference but “wrote [an] absolutely gorgeous letter about how this affected her” (8:16). When presented by the Community Accountability Panel, the letter made a strong impression on the youth who had broken into her car. The program coordinator explained that,

This was an incredible [case] but [the victim] didn’t want to participate so what were we going to do? Well, if our mandate had been that if there was no victim present, we’re going to send them through the criminal justice system, this kid would’ve been going through the criminal justice system. And would he have recognized the impact that he had made on this old couple? Probably not...that’s one of the reasons the board and the volunteers want to keep the panel in place (8:16).

Another program coordinator took the idea of flexibility in process even further, emphasizing the importance of accommodating the needs of the participants by “designing the process around the people” (3:27). The strict application of a conferencing model generally dictates that a conference take place that includes all the parties affected by an offence. This respondent provided an example of a case in which a more flexible response was in order because the two youths who were involved expressed a desire to first have a conversation with each other without their respective parents present. Consequently, a facilitator guided a dialogue with the young people in one room while another facilitator conducted a discussion between the two sets of parents in another room. The whole group was then brought together to discuss the issues that came up in the separate conversations. The program coordinator suggested that if the program did not allow for flexibility in order

¹⁶ Bazemore and Walgrave (1999) suggest also that there should be restorative processes available to meet the needs of victims in cases where the offender is unknown. This subject was not discussed in the interviews.

to honour the request of the youths it would have been “absolutely disrespectful to young people and their ability to do what they needed to do” (3:49).

This approach of designing the process around the participants has increased the satisfaction levels of participants as well as program volunteers and staff. Ensuring the control of the process resides with the participants rather than the program also results in a practice more consistent with the values of restorative justice. As one coordinator said,

We’re not saying ‘this is the process that you have to come through’ because quite frankly, we experienced that in the early days...that [following a rigid process] did not make sense for everybody...that’s where your program goal is then overriding the needs of the people that we’re there to actually serve (3:29).

Furthermore, this willingness to be adaptable has also been helpful when expanding referrals to work with diverse communities such as the developmentally challenged, allowing the program to create processes that are meaningful as well as safe for participants. A program coordinator offers this example:

We have worked on a couple of files recently involving adults with developmental disabilities and the fact that we are able to...tailor the process according to the needs of the participants [and incorporate] the input and feedback...from caregivers and support people for those folks has enabled us to work [restoratively]. Otherwise the potential for engaging in a process that may not be meaningful or even harmful is substantial. We are taking our cue from the people who know these folks well and are able to guide us in designing something that addresses the concerns in a way that is truly relevant for them (3:55).

Facilitating an encounter is not the only means of working restoratively. In some situations the parties may not wish to meet or it may not be appropriate to bring them together. As one participant said,

We don't conference everything but we do encourage restorative justice in the sense that we [encourage our clients to] repair the harm and deal with the victim and understand that [their] choices do have an impact on other people. So that's the restorative part. It's not always a conference, it's not always a victim offender mediation (12:21).

Flexibility and openness in program design and development can have the effect of increasing the sense of community ownership of the program. One of the program coordinators stressed how significant this was for them, saying,

[When starting the program] we weren't looking to transport a model, we were looking to see how do you get to a point where...you get community ownership of a program and how do you find a model or process that you can start with that is culturally appropriate and is going to be effective (2:18).

Prior to implementing this program, the community was asked for their support and approval. At the outset, specific respected members of the community were consulted and gave their endorsement for the program to be brought to life. Subsequently, the opinion of the general community was solicited at an open meeting. As the program coordinator said,

We took this risk...to say to the community 'if this isn't something that looks like it can work, if this isn't something that you can support but if you could support something like it, we'll go back to the table and try to listen to what you say and bring that to life or we just won't do it' (2:18).

The coordinator believes that providing this opportunity for consultation, even though it meant taking the chance that the community would reject the program, has contributed to the sense of community ownership of the program and consequently has been a factor in its success. When planning this program, the coordinators spoke with employees of established programs about their experiences with volunteer recruitment, types of cases and the potential pitfalls that come with starting a new program, but deliberately created a program that was unique to their own community and that met the needs of the community that were articulated in the consultation process.

Another participant suggested that while a reputable program model that is in use in another community may be used as a “template” for a new program, the program should evolve according to the needs of the community in which it operates in order to maintain the support of the community (8:38).

STANDARDIZATION

The standardization of restorative practice is a topic of considerable debate for restorative justice practitioners. Presently each community program follows the guidelines required by its funders, and as the funding sources vary, so does the content of the guidelines programs are required to follow and the stringency with which the guidelines are enforced. A number of respondents expressed ambivalence regarding the need for further standardization of restorative justice. On one side were concerns that the values of flexibility and responsiveness that are at the core of restorative justice may be lost if standards are externally imposed; on the other were concerns regarding the future of restorative justice if no external standards are in place. As one participant commented,

I’m not for standardization because that’s not in line with the philosophy or idea that we’re accountable to the community...all communities are different so why do we want to offer standardized services that may or may not meet the needs of our residents? On the other hand, I think there’s some programs out there that, if I were to really give it some thought, probably couldn’t sleep at night wondering what the hell they’re doing to people (4:56).

Another participant offered this comment:

You’re dealing with relationships and you’re dealing with communities and every community is going to be different. You’ve got different dynamics, different cultural population mix, your educational make up is going to be different and I think if you standardize what a restorative justice program looks like, you are going to be trying to fit round pegs in square holes (8:34).

The latter respondent went on to say that adhering to standards can be a way of behaving professionally, saying,

I feel you have to be responsive to the needs of your community but on the other hand, I think there has to be some professionalism in how the programs are operated. I mean, we're expecting the people who have come through our program to have accountability. Why shouldn't we? And I think you have to really ensure that you are protecting everybody that's involved in whatever way that might be. You need to protect your volunteers. You know, I make sure that my volunteers are safe. We have insurance. And that's being professional, okay? (8:34).

As programs work increasingly closely with the criminal justice system, questions can arise regarding the limits of community groups. One participant remarked,

As soon as we move towards standardization I think we've lost the heart of restorative justice. At the same time I think we need to know what our limits are. What are the legal questions if we're going to be involved in various stages of the justice system? What impact does our role have on the traditional justice system and people's rights? (3:35).¹⁷

Adherence to standards can be a way of directing practice and being able to identify if a program strays from restorative justice values. Other respondents offered these comments:

You hear about bad stories [where participants in a restorative process have had a negative experience]...people don't want to talk about those but they are out there and there are situations that have blown up for people and some of them have caused more harm than good at the end of the day...if you are going by a set of boundaries and parameters and policies, I think you've got something to measure against (12:37).

My fear is that, and [this situation] currently exists now, is that anybody can say that they can convene a conference. And I just don't know that that's necessarily the case especially when it comes to dealing with very serious issues where you're managing fairly volatile situations with people. It's not

¹⁷ In addition, there are questions about civil liability, *Charter* rights and human rights in restorative processes. These topics were not addressed in the interviews. See Braithwaite (2002) and Blagg (1997) for discussions on the protection of human rights in restorative justice processes.

something that everybody can do. I think there needs to be some standardization (7:55).

Another participant suggested that uniform training courses and certification could provide a measure of consistency for restorative practice by building up a “brand” and ensuring the quality of that “brand”. This person employs a “scripted” model of conferencing, which he says is a “fairly palatable way for people to do it” (7:65).¹⁸

If programs are relegated to dealing with relatively minor cases the enforcement of standards is not such a pressing issue; as programs become more closely connected to the criminal justice system and accept more serious cases, quality control becomes a subject for debate. For example, the extra-judicial sanctions provision in the *Youth Criminal Justice Act* is a more formal type of diversion meant to be reserved for ‘more serious’ situations that cannot be adequately dealt with by the police through extra-judicial measures. As one government employee said,

one of the reasons that Crown and probation made the policy around not referring to community groups was because there wasn’t that sort of quality control (5:102).

WHAT SHOULD STANDARDIZATION LOOK LIKE?

If they are to be adopted at all, practitioners tend to agree that standards should be flexible enough to accommodate the differences in communities and the needs of particular participants. They should be based on values, principles and best practices rather than particular models. As one participant put it, the goal should be “unity of program aspirations... or at least in sharing values and principles but not uniformity” (2:32). There is

¹⁸ A scripted model of conferencing employs a script with “key statements and questions written out for the convenience of the facilitator” (O’Connell 1998: 7). Although other respondents are also concerned that restorative practice meet certain standards, as mentioned earlier, many feel that a restorative process needs to be flexible in order to meet the needs of participants. I did not specifically ask participants for their views on particular practices.

the recognition that this is a new area that is growing through practice and that may never see a consensus regarding what the standards should be and who should monitor them. As one participant noted,

You've basically got a sector growing that didn't exist seven or eight years ago. So like the [name of program] could sort of self appoint itself to organize a conference every year to come up with standards that they'd encourage everybody else to go along with but the [name of different program] don't particularly like what they do (10:43).

Several participants focused on best practices, competencies and skills as a way to address this issue,

[People say that] perhaps [we] need more standardization, which I find very scary. I think that every program can understand its best practices if they have a good philosophical and skill-based approach to restorative practices. There's not one best way to do it (2:14).

It's not about professionalizing it – it's about competencies and skills (3:35).

It doesn't need to be professionalized and I think there are places where professionalizing or at least ensuring competence is a critical thing that the government needs to look at. I understand that especially if they're funding those programs there are liability issues and on and on and on. But I far prefer the notion that any field needs to police itself and that's where it works best and where your peers are the ones helping you determine your competencies (9:33).

The imposition of standards should not stop restorative justice programs from taking risks and evolving as “we are still learning how to do restorative justice well”

(Braithwaite, 2002: 565). As one program coordinator said,

We've made mistakes. We've learned from those mistakes... We're not going to try to cross all the 't's and dot all the 'i's because we will be sitting where we are five years from now in the same place. So we took what we thought was a working, viable program and we've evolved from there (8:38).

There are currently two examples of guidelines for restorative practice:¹⁹ the Ministry of Public Safety and Solicitor General guidelines and the practitioner-created “Charter for Practitioners of Restorative Justice.”²⁰ In addition, some programs have negotiated Memoranda of Understanding with their referral sources that ensure that both the program and the referral source have a common understanding of how the work should be done.

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL GUIDELINES

The Ministry of Public Safety and Solicitor General’s guidelines are for pre-charge, police-based restorative justice programs they fund.²¹ The guidelines cover such issues as participant eligibility, confidentiality, and record keeping, and are “based on the various laws that come into play” (11:10). A respondent from the Ministry noted that the guidelines are “delivery expectations” and that programs that receive Community Accountability Program funding are required to follow them (11:13). She also remarked,

There is no formal audit [to judge whether a program is following the guidelines] but it’s more keeping in touch and developing those kind of relationships, those trusting relationships that is really important...[so that program coordinators] feel that they can come and say ‘you know what, we got this really weird referral and we took it but we’re not comfortable taking it.’ And instead of saying ‘that was wrong, we’re going to cut you off funding’ saying ‘okay, how can we work with you to make it okay now and ensure that that doesn’t happen again?’ (11:18).

CHARTER FOR PRACTITIONERS OF RESTORATIVE JUSTICE

The Charter for Practitioners of Restorative Justice was created in 2002 by a group of BC practitioners to help guide them in their work. One participant said, its purpose was to:

¹⁹ Many more examples of guidelines exist but these were the only two that were noted during the interviews.

²⁰ The Charter for Practitioners of Restorative Justice can be found in full at <http://www.sfu.ca/cfrj/fulltext/charter.pdf>.

²¹ See http://www.pssg.gov.bc.ca/community_programs/download/CAPInformationPackage2004.pdf for the Community Accountability Program Information Package, which contains the Guidelines.

Get a group of like-minded people together...[to create] a statement of how we intend to practice and live out the values that we claim to have and we invite...challenge where we're not living restoratively or acting in ways that really do not fulfill these value sets (9:34).

Another participant said,

It's about starting the dialogue about what it is that we say we value and how do we operationalize those [values]? How do we as practitioners take personal responsibility? We talk about accountability issues...we need to be accountable to one another as practitioners as well. How do you do that in a way that doesn't say this is the right way or the wrong way? (3:54).

Another member of the group advocated this as a method of coming up with standards because it is the coming together of a knowledgeable, experienced group to create a document that will evolve as the movement progresses. Particularly important to this person was the fact that the values that are articulated within the document are not restrictive and allow for diversity.

Another respondent felt that it was important to have bodies outside of the field of restorative justice contributing to the creation and monitoring of standards for restorative justice, saying,

It is healthy to have individuals and or organizations other than those involved in the delivery of restorative justice, critically observing and commenting on restorative practices. In other words, I subscribe to the belief that no agency should be left completely to 'police' itself. If self-monitoring occurs in isolation of external monitoring the result is likely to be diminished public confidence and potential harm to participants. It needs to be acknowledged that this is a relatively new area and that people who have studied or worked with offenders and victims, and other reconciliatory processes have something to offer us. These people could include, but are not limited to, victims services personnel, psychologists, mediators, people experienced in community development, and academics (2:46).

FORMALIZING RELATIONSHIPS: AGREEMENTS WITH GATEKEEPERS

One of the program coordinators spoke about the lengthy process of negotiating a formal agreement with the criminal justice system gatekeepers with whom he works. This “unique protocol” guides the relationship between the program and Crown Counsel and gives the program “a greater measure of control than other alternative measures programs have” (2:16) over the decisions made regarding dispositions. This control was necessary in order to ensure that the program meets the needs and wishes of the community. Negotiations did not proceed smoothly, however. After several years at the table and just when the program was ready to obtain the money to begin operation,

The Crown said ‘in order to get referrals you have to go through a recognized mechanism so we have to recognize you as an alternative measures program’...it was sort of like ‘no, that’s wrong. That’s not what the community wanted, fought for, spent all this time at the table with you for and so...okay, [if] you need a mechanism, how can that mechanism meet the community’s needs?’ So we didn’t take referrals for almost three months until there was a way to recognize community control over the dispositions (2:17).

The solution involved the creation of an inclusive list of pre-approved healing plan options. As long as the disposition decided upon is included on that list, the program does not have to obtain Crown Counsel approval. The program coordinator said “We can go outside that list, which we’ve never done in three years now because there hasn’t been a need for it. So we did get something unique that satisfied the community, that satisfied Crown at the same time” (2:17).

Another program coordinator strongly suggested that a formal protocol helps ensure that the program and criminal justice system gatekeepers are on the same page. A Memorandum of Understanding, or something like it, can not only make sure that there is a shared understanding between the referral source and the community agency about their

relationship, it can also articulate protocols for dealing with issues such as reporting, record-keeping, confidentiality, and how to deal with civil processes that might come into play in some cases. According to this program coordinator, whose relationship with the police is continually evolving, a Memorandum of Understanding can decrease the possibility of confusion and reduce the need for renegotiation of issues as the program progresses. Although still without a Memorandum of Understanding, this program has made a conscious effort to communicate to the police what is appropriate in terms of referrals and “where [their] processes make the most sense” (3:23).

2) WHO GETS TO PROVIDE RESTORATIVE JUSTICE SERVICES?

Currently in the Lower Mainland of BC, restorative services are offered through community-based agencies and probation offices.²² The relationship between system-based and community-based services is still evolving. Questions raised include who gets to do this work, what types of cases are referred, and at what stage of the criminal justice process referrals occur.

To have an employee of the criminal justice system provide what has in the past been a community-based service is contentious for many restorative justice practitioners. And while one may ask “if you believe in restorative justice why would you not want everyone to incorporate it into everyday life?”, the answer is not straightforward. It is precisely this question of who should control justice issues – and the attendant belief that the answer is “the community” – that triggered the growth of restorative processes in the first place. Additionally, scepticism was expressed as to whether probation conferencing

²² Across the country and in other parts of the world, restorative services are also offered directly by police officers. While many police officers in the Lower Mainland are trained to facilitate restorative conferences and may be doing so on an informal basis, to my knowledge there is no specific police-run restorative program in this area.

specialists can stretch beyond the traditional foci of enforcement and supervision in order to facilitate processes that are in line with the values of restorative justice.

However, just because a restorative program is community-based does not make it immune to criticism. Many restorative programs use community volunteers as facilitators, mediators or mentors; and some participants express scepticism whether volunteers have the necessary training and skills to deal with the issues that can arise in the course of facilitating a restorative process. In addition, there is a perception that community-based programs do not have access to adequate resources necessary to address certain types of offences, or the specialized knowledge required to handle complex cases. Another concern is the lack of external standards to regulate restorative programs.

In the following section I will address the concerns related to probation officers facilitating restorative processes and will then discuss the concerns related to the involvement of community agencies in the provision of justice services.

PROBATION OFFICERS PROVIDING DIRECT SERVICE

In past two years, a number of youth probation officers in BC have received training in the facilitation of restorative justice conferences for young offenders and their victims, and have been assigned to specialist positions. This development was prompted in part by decreasing caseloads, in part by the new youth justice legislation that allows for a conference to be convened at the discretion of youth justice system personnel, and in part by an effort to “bring restorative approaches into the existing work of probation officers” (10:2). As one employee of the Ministry of Children and Family Development (MCFD)²³ said,

²³ The Ministry of Children and Family Development is the provincial department in which youth probation service is located in British Columbia.

I think what we've done with looking at the restorative approach is [to say] okay, how can we bring that in and apply it to kids who are going to court and who are being dealt with by judges? And is there room for kids who may in fact go to jail or may be sentenced by a judge to a lengthy term of probation for a fairly significant offence? Is there room for a restorative approach there? Can we make the court system and its dealings with young offenders more responsive to victims and their communities by applying some restorative justice approaches? (10:3).

Initially, referrals were expected to come from judges for a conference to take place after a guilty plea (or finding of guilt) and prior to the sentencing hearing. The judge would then take into account the outcome of the conference when passing sentence. Due to low numbers of referrals at this stage,²⁴ these specialist probation officers are now also taking referrals from other probation officers and Crown Counsel at the extra-judicial sanctions²⁵ stage of the court process.

One objection to probation officers acting as conference facilitators is that the regular enforcement and supervision duties of a probation officer are at odds with the functions of a restorative facilitator. This appears to be recognized by MCFD, as the person I spoke with said,

24 Various reasons were suggested by one participant to explain why the referral numbers have not met initial expectations, including that the criminal justice system is entrenched and slow to change; that the Ministry was not able to provide conferencing specialists in every community in the province; and that there has been a “fairly significant and unanticipated drop in the number of kids coming into the system” since the YCJA implementation (10:8).

25 As a form of diversion for youth from the court process, extra-judicial sanctions are similar to Alternative Measures, which was available under the *Young Offenders Act*. In BC, “[t]hese sanctions are the responsibility of MCFD [the Ministry of Children and Family Development] either by direct service of a Probation Officer or through an agency contracted by MCFD. These are used only if the youth person cannot be dealt with adequately by way of a warning, caution or referral, or because of the seriousness of the offence... Under YCJA, Young persons may be considered appropriate for extra-judicial sanctions even with a previous record of Police/Crown warnings, cautions, extra-judicial sanctions and or findings of guilt. Young person must accept responsibility and consent to extra-judicial sanctions before Crown approval” (Townsend, Jamison and Friesen undated: 2-3; emphasis in original).

We need to have people who are removed from supervision and enforcement responsibilities because they need to be able to balance the needs of victims and offenders so they shouldn't be either perceived or in actuality acting as advocates for offenders or victims (10:19).

However, concern was expressed by a number of participants that the conferencing specialists will continue to perform the duties of regular probation officers, and that this will conflict with their role as an independent convener of restorative justice conferences. This appears to be a very real possibility due to budget constraints and the fact that in some communities the conferencing specialist is not receiving enough referrals to justify a full-time position. There is a fear that instead of having dedicated conferencing positions, all probation officers, even those who do not wish to, will be forced to do it "off the side of their desk" (5:94). As one probation conferencing specialist said,

A lot of us want to do [restorative justice work] but most people don't...[name of probation officer] doing conferencing? I mean it's a joke, we've laughed about it. Which isn't to say that [name of probation officer] wouldn't support it but there's a difference between supporting it and facilitating it (5:99).

Another conferencing specialist had this to say about the challenges that would come with attempting to juggle a caseload and also to facilitate conferences:

If you're managing a caseload, especially because kids are getting more and more high risk to re-offend because of keeping the lower risk kids out of the system, you're going to be quite actively involved in managing those cases so what's the thing that's going to fall away? Enforcement and protection of the public should be paramount, number one. I mean, I think there's an essential conflict between using enforcement and doing the restorative piece. And if I had to prioritise my day and I had a whole bunch of cases boiling over, that conferencing piece is not going to happen. I'm not going to put my mind to doing that nice, warm, soft, fuzzy stuff when I have breaches that I've got to get done (5:99).

There is also apprehension that the motivation of probation officers entering this line of work will negatively influence the experience of the participants of restorative

processes, as they are trained to work with offenders and are now being asked to work with victims. As one respondent said:

I have no doubt that some of those probation officers are doing a good job...[but] there's a real concern about people who have entered into their career paths to work with offenders to enter into restorative processes where your job is to facilitate or guide a healthy, respectful, safe conversation for victims, too (2:27).²⁶

Even if there is a separation between the duties of a regular probation officer and the duties of a conferencing specialist, there is still concern among restorative justice practitioners that probation officers should not be doing this work. One respondent said,

I think having an individual that's trained under a retributive philosophy doing restorative justice is wrong ... it would be like me suddenly having to work under a punitive philosophy. I couldn't do it. It's a foundational way of thinking and believing and acting ... [a retributive belief system is] going to come out somehow indirectly or directly or however subtle in those conferences and really affect people (4:70).

One of the probation conferencing specialists offered a different view:

We advocate when we have to advocate and we enforce when we have to enforce but we can walk that middle line. A lot of us anyway. I think that some people are more enforcement oriented than others but my experience with most POs [probation officers] is that ... they'd rather work on problems and resolve things rather than [go to] court (5:19)

This conferencing specialist agreed that the work of probation is offender-focused but suggests that conferencing specialists are able to "step away from that" (5:20).

One way restorative programs that are not system-based seek to involve the community is through volunteer mediators or facilitators, who are members of the

²⁶ This is not just a concern in relation to system personnel facilitating restorative processes. As Cormier (2002) says "[a] concern [for victims and advocates for victims] is that restorative justice programmes are dominated by non-governmental organizations with a primary mandate to assist offenders in their rehabilitation and reintegration, and that the perspective of victims has not been adequately taken into account in the design and implementation of these programmes" (12).

community. When this work is taken over by professionals, an opportunity for active citizen participation is lost (Umbreit 1999). As one coordinator of a community-based program who objected to probation officers doing this work explained,

[The probation conferencing specialist is] kind of like flown in to do justice...like they do up north, like the expert going to come in a solve all the problems for a day and...[the conferencing specialist] doesn't serve the community – it's not a community-based thing. It's top down again, classic example of co-optation where the system is taking over and co-opting something that they don't even understand but using it to suit their own purposes – to stay involved and maintain power and control (4:70).

When asked, one of the probation conferencing specialists had this to say about how the community is involved in her program:

Community is involved so far for me personally in providing me facilities to run these conferences...they're not directly participating in a conference but they're very supportive of that so I see that as some community partnership there...So community building and partnering depends on how you see it...you know, I think it's a service to the community because it does better the community because these people that participate in the conference are part of the community (6:30).

This participant also said,

There definitely has been a lot of work that I've had to do on community building. I continue to go out and to speak to various groups...a lot of my work is presentations to various community groups on restorative justice principles and explaining what this new Act is and what that means for them as community members (6:1).

COMMUNITY-BASED PROGRAMS PROVIDING RESTORATIVE SERVICES

The philosophy of restorative justice challenges the notion that an outside expert is more qualified to solve the problems of a community than community members themselves. As a society, we tend look to the professionals in the justice system to manage those events labelled as 'crimes'. Restorative justice seeks to change that assumption. Although the philosophy of restorative justice advocates a response when someone experiences harm

whether or not a law has been broken, a number of community-based programs operate in conjunction with the criminal justice system, receiving referrals after an event has come to the attention of system personnel. While the previous section outlines some of the objections to justice professionals becoming involved in the provision of restorative services, community-based programs also face questions about why they should be given the task of addressing justice issues. One respondent pointed out that,

Amid all the hue and cry from the public about crime and punishment, I don't hear anybody demanding that the government get out of it and turn it over to well-meaning citizens (10:37).

Proponents of restorative justice feel that it is only through the active involvement of citizens in restorative processes, and through the responsiveness of those processes to the needs of the community that an effective and satisfying system of justice can be achieved. Involving the community in a meaningful way is perhaps one of the most challenging aspects of the practice of restorative justice. As one participant put it,

I smile at some of this because it's a little thin, but I often hear victim offender mediation programs talking about well, [we involve community] on our board, as community volunteers, trained volunteer facilitators or mediators and that's all true but...we haven't traditionally at least used the community in the sense of, you know, some of the graphics you see with the three intersecting circles of victim, offender, community and the really restorative ones are the ones that use all three. Yeah, that's nice for a graphic but I'm not sure that that's necessarily all that defines a restorative program. And that one that doesn't land squarely in the centre of the little cloverleaf there, the little cloverleaf if you're including government in Dan Van Ness' construction, means that it's not fully restorative. I think that's got to be done on a case-by-case basis. What are the needs presented? How close can you get to an ideal community for the participants? (9:27).

Another program coordinator discussed the difficulties associated with trying to reach out to the people in the community that "don't go to the...forums, that don't go to

the library, [that] don't read the paper" (4:37). It is vital that this population be reached, however, because as the coordinator says, it may include the people that:

probably need our program more than anybody...people that the cops would look over and say 'you're not a good kid so you're not going to the restorative justice program...you're going to court.' So if these kids know about our program then maybe they could say, or if their parents know [they could say to the police] 'oh, what about the restorative justice program?' (4:37).

However, the program coordinator did not feel that the program was doing what it needed to do in order to connect with this population and did not have a specific plan in order to do so.

One way that the programs can involve the community is through their participation in the restorative process. By providing an opportunity for the active involvement of the people directly impacted by an offence in finding a resolution, one can argue that the community is involved in the justice process, albeit in a limited way.²⁷ In addition, many programs utilize volunteer mediators or facilitators, and/or an advisory committee or board made up of volunteers in order to facilitate community involvement.²⁸

27 Victim offender mediation or reconciliation programs have been criticized as being too 'private' (Bottoms 2003) or too narrowly focused when compared to other models in achieving the goal of involving the community through the participants. Family group conferencing, for instance, generally involves more support people and other community members in the resolution process. However, one of my participants suggested that it is not always beneficial to involve larger numbers of people, saying "I think family group conferencing has taught us a lot of things...[but] I still maintain that you can do further harm by involving too many players. There are circumstances where...dyadic mediation is precisely the right tool for the task" (9:27). In support of this view, Bazemore (1997) suggests "the bottom-line objectives of involving the victim, gaining reparation, and holding the offender accountable for his or her crime do not necessarily require the larger community" (206).

28 Practitioners generally felt that it is not reasonable to expect a volunteer to assume the time commitment and workload required to develop, promote and operate a successful program – they felt that restorative justice programs should have a paid coordinator. A noticeable variation in opinion came from the participant from the Ministry of Public Safety and Solicitor General who suggested that volunteers petitioning the government for funds to hire a paid coordinator for their program equated being paid with being professional, and suggested that "you can be a professional in terms of your outlook and your training and your ethics without being in a paid position" (11:3).

The number of people interested in volunteering for a program, as well as the quality of volunteers and the level of their commitment to the program can be viewed as evidence of the program's success in responding to and meeting the community's needs. One of the program coordinators said "making the community feel that there was ownership [was successful] so when it came to looking for volunteers... [i]t was really easy to find people who wanted to be a part of it" (2:18).

The argument that the community can be involved in a meaningful way merely with the use of volunteer mediators has been criticized. Bazemore (1997) suggests "it is at times argued that citizens who volunteer as mediators represent the larger community, such participation assigns a decidedly restricted role to citizens" (206). Two participants addressed that critique by giving their volunteers the opportunity to participate in setting the direction of the program. One respondent emphasized that they have tried to provide their volunteers with a broad enough understanding of what restorative justice is "at its heart" so that the volunteers will be committed to the philosophy of restorative justice, and not just to the program (3:10). The coordinator advised that the board for her program recognizes the importance of volunteers from the community, and involves them in setting strategic objectives for the program. Their education regarding the principles of restorative justice gives the volunteers the capability to take on this type of role. Furthermore, this program actively uses the knowledge and expertise of their volunteers to adjust and improve their practice by soliciting and incorporating feedback from their volunteer facilitators regarding their experiences.

This program is not alone in its recognition of the contributions volunteers can make in ways other than through simply facilitating restorative justice processes. Another

respondent would also describe her program as volunteer-driven: the volunteers provide input on everything from what model should be used to what the program guidelines should include to the topics that need to be covered in ongoing volunteer training sessions. As this program coordinator said “most stuff in our organization is volunteer led so it’s by consensus...we try to get as much input as possible if we are going to try to change something so we’ll have volunteer meetings every month” (8:18).

While the participation of volunteer mediators or facilitators can be a way in which the community is included in the operation of restorative programs, the use of volunteers is one of the reasons why some respondents questioned whether community groups should do this work. It is noteworthy that, with one exception, all those who expressed concerns regarding the use of volunteers were government employees. The coordinator of a community-based program (which does not draw on the services of volunteers) questioned how volunteers could be held responsible, saying “how accountable are you if you’re a volunteer and you do something wrong? What are they going to do, fire you?” (12:36).

There is a perception that the volunteers of community-based programs do not receive enough training to be able to facilitate restorative processes effectively. One of the probation conferencing specialists had this comment in relation to volunteers:

Training costs money. Understanding takes time. And a lot of community groups, they don’t really train their volunteers. They figure they’re beholden to their volunteers for doing this work and they have a bunch of well-meaning people, I think in some cases, not all the time, but I think community groups are starting to get over that (5:76).

Furthermore, there is the perception that volunteers do not have the capacity or desire to contend with the complex and challenging situations that come with the more serious cases. Another government respondent said,

I think that restorative justice community programs probably already and increasingly in the future will be dealing with more and more complex situations. Not necessarily the criminal side of them but the social and behavioural issues that come up. And if I go along as a volunteer who would like to sit in and help facilitate a conference every so often and whatever else, take a kid out in his community, I don't know if I have the expertise to actually go into court with that kid or go down and advocate for mental health services (10:31).

Another government participant questioned whether those involved in community-based programs have the specialized knowledge required to address certain types of offences:

Certainly there [have been times when] I've had to explain why a program would have to be careful about taking certain types of referrals. See a sex offender referral especially with a youth, if they haven't looked at all the contingencies around sex offending and don't know that kind of stuff and they're taking those kinds of referrals then they haven't looked at the family dynamic and they haven't looked at the potential future and existing and victims, they haven't looked for all of those things and if in fact that youth then went out to offend and the intervention had been ineffective and that came to light, then that program may be held liable for what happened (11:21).²⁹

Concern was also expressed that community programs do not have access to the resources necessary to address the issues that arise with more complex cases. As one participant said,

29 One of the community-based program coordinators felt that her program could handle sexually based offences even though they utilize volunteers. She said, "We've accepted a sexual touching case before and it went really well. They didn't meet face to face but that's okay. You know, that's not what the parties wanted. We still accepted the file and processed it and people were happy" (4:18).

[I]t's not much good having a restorative justice program at the community level that keeps kids out of the formal system if in fact that kid and his family have all sorts of needs that they can't access resources to deal with unless they get to that formal system. So how do you break down those sorts of barriers? So you got a kid who's committed a relatively minor offence and gets dealt with by the restorative justice association who's got major mental health problems. And the community volunteers then become advocates for the access to services for a family that's very needy. Access to forensic assessment, access to [inaudible]. It really is about resources and it's also about as situations become more complex, you actually are going to find it more difficult for volunteers to work their way through those situations (10:36).

Community-based programs do not deny that facilitating restorative process requires skilled, knowledgeable, committed people. Obtaining adequate funding in order to be able to provide a high quality service is a major challenge for many programs; this issue will be addressed in a later section.

3) WHO GETS WHAT TYPES OF REFERRALS?

Perspectives on who should facilitate restorative processes are reflected in the opinions of participants regarding appropriate referrals. One point of view is that there is room for an array of both system-based *and* community-based restorative justice services due to the range of behaviour that can be addressed by restorative processes. Some community-based practitioners are comfortable in the role of providing restorative justice services at the lower end of the continuum for minor offences. Other community-based practitioners fear that the implementation of system-based restorative services will negatively impact the practice of restorative justice, and are concerned about the ability of those working in the system to work restoratively.

Creating a collaborative relationship between probation officers, other criminal justice workers and community-based programs is not easy. As one government participant said,

The sort of competitive stuff...is definitely a barrier – the sense that you’re taking my work or you’re doing my work. I mean there’s some probation officers who think that they shouldn’t have anything to do with community restorative justice organizations because if those guys grow more they will work them out of a job. There’s some community restorative justice organizations who don’t think that probation officers should have anything to do with restorative justice because somehow if the government touches it, it’s tainted (10:33).

One challenge that many restorative programs face is obtaining sufficient numbers of referrals to be sustainable and maintain their funding source. Community-based practitioners often aspire to maintain distance from the criminal justice system in order to provide services that are true to the values of restorative justice, while understanding that the more closely linked to the justice system they become the more referrals they may receive. A significant goal of advocates of restorative justice is to provide processes that are driven by the needs and desires of the affected community; there is a perception that close ties with the criminal justice system put this at risk. With probation officers now providing restorative services there is greater concern that the number of referrals made to community programs will drop.

Those who run community programs are concerned because many of the conferencing specialists who facilitate restorative processes out of probation offices are not receiving significant numbers of referrals. This is worrisome for those in community-based programs who question what the failure of the probation officers – who are part of the system and who have working relationships with criminal justice system employees – to generate referrals means to community programs that do not have the same advantages. As one participant said,

[The conferencing specialists are] looking for work right now from what I know. They're not getting the amount of cases that they want to and how does that impede upon us as practitioners here? They're closest to [the criminal justice system], they ultimately have more power...they're being paid by the system. How is that going to affect our referrals? (2:28).

In addition, those in community-based restorative justice programs expressed suspicion regarding why this change took place. As one respondent said,

There's a lot of politics there...[the work] gets taken away from the people who are doing it and given to somebody else and it's very much a political thing. People are trying to save jobs in the ministry so they're giving probation something else to do. So it's highly political. I think that's a bit of a problem (12:24).

And there would appear to be some merit to that view. For a large bureaucratic institution such as the provincial government, policy decisions are not made simply on the basis that a certain direction is correct; there are other obligations and constraints that must be considered. In the case of implementing restorative practices in line with the *YCJA*, one factor that came into play in BC was labour-management. One respondent explained that the BC government has a collective agreement with its unionized employees that states that before an employee is laid off due to lack of work, the work that has been contracted out must be brought back (10:36). Previously, the government contracted out some alternative measures programs and these contracts have now been cut. The caseloads of youth probation officers had been dropping for some time and so layoffs were imminent. This participant told me that reallocating probation officers to conferencing specialist positions was one way to save their jobs.

There is also a perception that system-based services are in competition with community-based programs. One probation officer related how she had to "sell" what she was doing to one community-based program when she accepted the position of

conferencing specialist by assuring them that she was not taking work from them. She said, “I was very clear with them. My referral source came at a very different level of the system than theirs and it was more of a complementary service” (6:1). She also recounted the conflict she had with another program that was concerned they were going to lose their funding to provide this work, saying “we were, well, kind of fighting a little bit about some of the referrals” (6:1). Her interpretation of the disagreement was that it was simply a concern over money; there was no objection to probation officers doing this work. She felt that the staff of the community program was concerned that the advance of probation officers into this area would negatively impact the amount of funding that would be available to their program:

[the community-based program doesn't] want to deal with higher risk, more serious types of kids. They are definitely a volunteer-based organization that only wants to deal with really minor, first time offenders so they're quite happy to have someone who they perceive as a little more experienced to deal with those types of kids. Their issue, I think is more, if they're not doing some of this work, or it's being funnelled back to probation, it's going to affect their funding (6:1).³⁰

There is fear that the probation conferencing specialists will receive referrals for cases that would otherwise go to the community programs. Due to the different stages in the court process at which referrals can be made, only two programs included in this study were directly affected by this concern. One of these programs was initially created to take referrals from probation at the alternative measures (now called “extra-judicial sanctions”) stage of the youth court process. At the time of the interview for this thesis, some cases at the extra-judicial sanctions stage were being referred to the conferencing specialists while other cases were sent to the community-based restorative justice program. Since that time

³⁰ I was not able to speak to the staff of this program in order to hear their perspective on this issue.

the funding for the program has been cut³¹ and the program has ceased taking referrals at the extra-judicial sanctions stage of the court process; these referrals now go to the conferencing specialists. The agency has begun the process of amalgamating two separate programs, and is moving towards taking referrals from the police. The second program that could have been affected by this change is an Aboriginal-focussed service that, perhaps due to its unique protocol, continues to accept referrals for adults and youth at the alternative measures stage and extra-judicial sanctions stage of the court process, respectively.

Because “criminal behaviour” includes a wide range of behaviour, one perspective on the issue of who should receive what type of referrals is that there is room for a continuum of responses. As an employee of the Ministry of Children and Family Development (MCFD) said,

The position that the government in BC is generally taking is that there’s going to be more community involvement at the lower end of the seriousness continuum and more state involvement at the higher end (10:1).

This position is demonstrated by the example given above, and by the government’s use of probation officers for “more serious” cases.

Budget limitations do not allow for the appointment of probation conferencing specialists in most communities in BC, however. Although the expertise, interest and capacity to do this work may already exist in some communities, MCFD did not consult with communities to attempt to come up with another way of providing conferencing services in places that are not assigned a specialist probation officer. As I was told:

31 The funding source was the Ministry of Children and Family Development.

There wasn't a particular need to consult with people in those communities because there wasn't really that option. I mean, I suppose you could say, why couldn't you consult and come up with some sort of way of doing it? Well, because there wasn't the political will to do that. The political will was along the lines of community-based organizations run by volunteers can continue to work with police referrals but we're not going to ask volunteers in community organizations to do processes with kids at the other end of the continuum (10:30).

Government personnel are not the only people concerned about restorative justice programs taking referrals for serious cases. Program coordinators who wished to take on more serious cases also expressed concerns regarding their capacity to take on the challenges that would come with that. One respondent suggested that the practices of some programs could be improved to be more in tune with the values of restorative justice, saying,

We're not empowering youth when we have a whole bunch of people telling youth what's good for them, when they're criminals, when they're doing developmental stuff...so if we're working like that with youth, it's no wonder people are really worried about us moving into areas where there's interpersonal, interfamily kinds of violence and ongoing conflict and on and on because I don't think we're getting it too right around the young people (3:49).

Furthermore, programs often operate on very small budgets and funding for training is limited. As one participant said "there's a lot of reasons why people should be wary of the types of cases restorative programs deal with because the funding is scarce to properly train people to deal with it" (2:32).³²

If program coordinators decide to pursue more serious referrals, they need to realistically consider the factors that will influence their ability to handle these cases in a positive way. As one participant said,

³² The issue of funding will be addressed in a later section.

There's something about working in serious criminal matters that is really sexy and a lot of people just can't wait to get their teeth into the really heavy duty prison-bound offender stuff without, it seems to me, a requisite understanding of trauma. And whether that's victim trauma or offender trauma or both, I think there are a lot of folk willing to rush right in where angels fear to tread. And it sounds awfully condescending, but I don't feel that I've got the grounding in trauma that I need or want...So I do the best that I can do but what troubles me is knowing how much more there is for me to know, given how intentionally I've gone about learning about that stuff and getting the necessary credentials to be at least somewhat credible. Quite frankly it terrifies me how ill-equipped some are who are quite willing to rush in and take those cases with no sense of doing further harm or no awareness of how likely it is that they will (9:31).

In some instances community-based restorative programs can deal with serious situations and provide a real opportunity for healing. However, in order for this to happen, program personnel need to have adequate training and support, as well as the trust of the criminal justice system. One of the program coordinators related the following story that will illustrate this point:

There was a young boy who was riding his bicycle...against traffic as he would have been if he were walking and, off the roadway, a very impatient truck driver was stopped behind a car turning left and that car was there for a long time because the oncoming traffic just kept coming. So he went around the car that was stopped waiting to turn left, off the roadway with at least a couple of his wheels and struck this boy who was riding his bike up the gravel shoulder and killed him...there was no intent. It wasn't a criminal case, it was a motor vehicle accident, really that's what it came down to and...I think he was charged with something like operating a motor vehicle off the roadway or something...it was not even a particularly major offence but resulted in a loss of life. And the victim's family, mom and dad and one sister, I think, [were] devastated by this. Devastated by the fact that he sat in the back of the police car, did not even approach them.

This was their picture of the offence and the scene. Mom is concerned that this kid who always comes straight back when he's sent out on an errand isn't home. Walks to try and find him and comes across this scene where her son's dead on the scene. And it just tore her up that this offender just sat protected by the police in the back of the car and didn't approach her or attempt to apologize or explain or anything. Sent no cards, no flowers, no acknowledgement of responsibility at the funeral.

And Crown sent it to us, hoping that we could do something with this file even though it didn't meet any of the parameters and probably we never got paid for this file, because it didn't. But when I went to visit with the family and heard about their hurts and their perceptions of what had happened at the scene then went to talk to the truck driver, he was eager to meet with the family and said "the truth is I saw her arrive at the scene. I desperately wanted to get out of that police car. There are no handles on the inside of police cars. I couldn't get out and the constable at that point said 'you stay where you are. I don't think she needs to talk to you just now.'" And he said "I sent cards and flowers," and later they went through the cards and discovered that there had been one, just making clear the tremendous sadness and remorse he had.

When we finally met, the two parents of the boy who had died, together with the truck driver and his wife, and the range of emotion there was absolutely unbelievable when they heard his whole story. That he couldn't drive through that intersection, hadn't been able to since. That he was still having nightmares about it. That he had heard rumours that he had injured people drinking and driving, wondered if he'd been drinking. That was the first thing that the police checked out, of course. And there were rumours that he'd hurt other people drinking and driving before. And he was able to just give them the straight goods on all of that. No, there was no alcohol involved, that yes, he had had an alcohol problem he'd been working on that.

It was one of those situations custom made for some kind of conferencing and restorative process. Desperately was needed. And nothing in the criminal justice process had touched the real needs of those families. It was a very, very powerful meeting. Newspaper got a hold of that and actually did an article about it. And the Crown Counsel who referred the case, and the defence as well, wrote letters saying they weren't sure they'd ever seen such an important and healing outcome in a case this serious in all their criminal justice careers. So those things are tremendously satisfying. There are lots of currencies by which you get paid for doing the work and seeing people begin to heal and begin to recover, even in minor ways, but in this case actually flourish and begin to, in the case of the victims, begin to do some really significant volunteer work in the community around these issues. It was just a joy to watch (9:20).

In this situation, although the case did not meet the normal criteria for referral to this program, the Crown Counsel recognized that referral to the restorative program could provide an opportunity not available through the criminal justice process. The trust of

system personnel and the skills of program staff resulted in a healing outcome for the participants.

Not all community-based program coordinators are eager to venture into the realm of “prison-bound offender stuff,” however. Some view their function as providing a restorative response for low-level offences. This appears to be particularly true for two pre-charge, police-based programs. A coordinator of one such program offered this comment,

As a community-based program, we want to work with the front end, first time minor offenders that we can do the lesson with...then there's the next step, which is going through court...there's that whole public interest piece as well that says how is the public going to feel about the fact that offenders are being held accountable at this [extra-judicial measures] level? (12:25)

She went on to say:

We don't want to see kids...making bad choices get bogged down in the system that they shouldn't necessarily get bogged down in. We want to keep the system for the more serious violent offender (12:31).

This program coordinator feels that one of the strengths of their program is the ability to help youth understand the consequences of their actions. If she feels that the program can have some impact she encourages the police to forward a referral even if it appears to be for a relatively trivial case (12:11).

Another program coordinator suggested that she would not hesitate to decline a referral for a “petty” offence but would also consider accepting such a case if, after discussing the situation with the youth and their guardians, she feels that participation in the program would be of assistance. An example given by the program coordinator to illustrate this point concerned a youth who was picked up by the police for shoplifting. This was not the first time the youth had shoplifted and the youth's mother, who had taken her son back to stores on a number of occasions to return items and apologize, requested more

intervention. The program took the case in the hopes that participation in the program could positively influence the boy's behaviour (8:42).

This issue of whether or not to accept shoplifting cases is a divisive one for community-based restorative justice programs, and highlights the concern that some types of cases referred to restorative programs are not suitable for restorative interventions, and, if accepted, will negatively impact the viability of the program. As one participant said "we're not sustainable if we were going to do nothing but minor shoplifting offences and we've actually come to the point of saying we won't take shoplifting files" (3:9). A couple of programs made an exception if there was a victim that could benefit in deciding if they should take shoplifting cases, asserting that "mom & pop" stores may be suitable for a restorative process, while shoplifting offences that occurred against large retailers stores would be better dealt with by a probation officer (1:46, 3:9, 4:16). Another program decided to accept shoplifting cases because, as the coordinator said,

stores in this town – they are prosecuting. They are prosecuting an 87-year-old for walking out of a store with a jacket on that he'd tried on and he just forgot, walked out of the store. They're prosecuting a 12-year-old kid for taking food because he needed food. They are prosecuting...so in our community we felt there was a need to have another forum to handle these issues. So I think you have to look at your own community and your own needs and you have to be very open (8:17).

Roach (1999) suggests "[i]t may be necessary...at least for the time being, to define a line beyond which diversion and non-custodial sentences in the name of restorative justice are not appropriate" (519) in order to "encourage police, prosecutors and judges to link non-custodial dispositions for non-serious personal injury crimes to offenders accountability to victims" (514). Although it may be tempting to try to gain the trust of criminal justice by taking less serious cases, many of the practitioners that I spoke to highlighted the need to be

vigilant about the message that they send out regarding appropriate referrals or risk being marginalized. One program coordinator put it this way “once you start accepting [minor cases the police are] going to keep giving it to you because they’re going to think ‘oh well, okay. It’s acceptable’” (4:28).

WHEN IN THE JUSTICE PROCESS SHOULD RESTORATIVE JUSTICE BE IMPLEMENTED?

In addition to concern regarding the type of referrals suitable for restorative justice, the stage in the justice process at which restorative processes are offered can impact whether practice is in line with the philosophy of restorative justice. Specifically, can restorative processes be offered at all points in the system and still maintain the values of flexibility and voluntary participation?

An argument can be made that restorative processes should be available at every stage in the justice process in order to ensure that the decision to proceed with charges does not mean that an offender (or victim) misses out on an opportunity to experience a restorative resolution; the availability of restorative services within the criminal justice system could alleviate the concern that restorative justice would only be limited to minor offences that do not warrant the full involvement of the system.

For example, lack of access to a subsequent response should the restorative process ‘fail’ appears to be a concern for some criminal justice system gatekeepers who might otherwise refer to a pre-charge restorative program. It is the policy of Crown Counsel in BC *not* to subsequently approve a charge for an offence once the police make a referral to a pre-charge program even if the offender refuses to attend the program or does not abide by the terms of the program. The coordinator of one program reported that the police now contact her to discuss the suitability of the case and the likelihood that the offender will

successfully complete the program prior to making a referral in order to alleviate this concern (8:24). Another respondent offered this comment,

[The police] don't necessarily always like the answers that we give them when they ask questions...the most perfect example is [the question] 'what happens if a kid doesn't complete your program?' And when I'm honest and say nothing happens other than we make a note on the file that they were non-compliant [and] we reserve the right to decline that person coming back. And they say 'so nothing happens?' No, there is something that happens. It's just very much they want it to be tangible, when you don't comply, this will happen and that's the mentality all the way through the system...So it's questioning how the system works...one of the biggest challenges that we run into with the police is they want teeth and that's coming from an enforcement mindset (12:32).

Although this respondent criticizes the "enforcement mindset" of the police, the lack of recourse to the adversarial criminal justice system appears to influence decisions regarding whether or not to accept a referral. An example of a case that this program coordinator sent to the "next level" will illustrate her perspective. The situation involved three youth who built a shrapnel bomb and detonated it on their principal's doorstep at home. Although it was "a perfect restorative justice situation" (12:25) as the victim did not want charges to be laid, the program coordinator did not feel comfortable taking the case because,

[The offence] took a lot of premeditation and thought and planning and is it appropriate to hold them accountable here?...What happens if they don't follow through and they build another bigger bomb and they hurt somebody? I didn't really want to have that on my shoulders as a program. As far as a public safety or a public issue I was like hmmm, that's not somewhere I want to go (12:25).

As a result the case was returned to the police to be sent on to court. The coordinator of the program did want to see a restorative resolution to the offence and was hopeful that a referral would be made to a conferencing specialist at probation for a conference to be convened. The key factor in declining this referral appeared to be the fact

that the program did not have 'teeth'. Although the arresting officer thought the youth would benefit from a restorative response, the program coordinator said,

That's great but let them benefit at the level where there's recourse if they don't. I guess that's where I've regressed a little bit in my thinking [but] ...at least if they go for [extra-judicial] sanctions and the kids refuse to be a part of the conference or refuse to attend meetings, there's recourse [by way of the courts] (12:28).

The comments made by another participant further illustrate the perspective that victims and offenders may miss out if restorative justice is only offered for offences deemed "minor" by the criminal justice system. She expressed two concerns regarding referrals, which are made to the program after a youth has been diverted from the court process. The first is that some offences, such as auto theft, are not currently being diverted by the Crown Counsel and so, without restorative justice available post-charge, youth charged with this crime are not given an opportunity to participate in a restorative process. The second concern is that the majority of youth that are diverted are first time offenders so youth who have prior records are not given the opportunity to participate in their restorative program (and, as a result, neither are their victims) (1:42).³³ However, the question remains whether restorative values can be maintained when restorative justice is practiced within the criminal justice system.

One concern is that programs operating within the criminal justice system may blur the line between an offender making a choice to participate or feeling compelled to participate. As Van Ness and Strong (1997) suggest "it is difficult to refer to a process as truly voluntary if it exists in the context of the highly coercive criminal justice system" (79).

One respondent suggested that in order for a program to be considered truly restorative, the

³³ It is interesting that we do not see repeat offenders as a "failure" of the mainstream justice system and wonder whether it might make sense to try a different type of intervention.

way options are communicated to potential participants is crucial: “You have to present it to them in a way that they can see the benefits and they can also see the risks of participating and then have them make up their own decision” (1:1). There is concern that not all programs operate in this way:

I was at an open forum...[and a] discussion emerged about carrots and sticks...you know, dangle a carrot to get them to participate or use a stick to sort of [force] them into participation. That was a huge concern for me because...if you're going to force somebody into it then what's the point? (1:1).

Assuring voluntary participation becomes more challenging the more entrenched a program is in the criminal justice system. For example, the language used when restorative justice is introduced in a court setting is not consistent with the language typically used for restorative processes: a judge makes an ‘order’ for a conference to take place prior to a sentencing hearing or includes condition that a youth participate in a restorative conference as a part of probation ‘order’. Regarding the latter, one conferencing specialist had this to say,

The argument can be well, that's forcing the young person, the young offender to participate in this conference. Like, how voluntary is this process?...[but] although it's a condition, it is ‘as directed’ [by a probation officer] so if I meet with this youth it would be my call as to whether or not I feel it's appropriate for a conference and it's not held against the young person if I decide, for various reasons [that it would not] be appropriate to conference (6:9).

A second concern is that in order to be sensitive to the needs of participants, some degree of flexibility regarding process timelines is needed. Often victims or offenders are not prepared to deal with the impact of the offence according to the timelines imposed by the criminal justice process. In relating an example of a peer assault case, one participant drew attention to the need for a restorative response to accommodate the timelines of the

people affected by an offence. The first time she met with the program coordinator, the offender was not ready to deal with the offence or face the victim. The coordinator spent some time talking with her about the incident, explaining the restorative process, and the benefits and risks of participation. The coordinator told the offender that it was her choice whether to participate or not, and that she should think it over and keep in touch. Then, as the coordinator put it, “three months later she was in a completely different space and she called me one day and said ‘okay, I want to do it. I’m ready to talk’” (1:53).

Letting things unfold according to the timelines of the participants is a challenge for many of the program coordinators that I talked to, but is perhaps most felt by probation conferencing specialists when they receive pre-sentence referrals from the court. In these cases, when a youth is found guilty or pleads guilty, the case is adjourned for six to eight weeks for the preparation of the pre-sentence report. The conferencing specialist is asked to convene a conference during that period and report back to the court at the sentencing hearing. Although the conferencing specialist can attend court and request an adjournment, there is tacit pressure to conclude the case without delaying the court process. As one of the specialists said,

You’re working towards a court date and sometimes you...forget that people have to take their own time through it, that you may have participants that aren’t ready or that you’re pushing people to participate in a process that sort of is date focussed (5:2).

The previous sections have dealt with the questions of who gets to do restorative justice but perhaps the most pressing question for community-based restorative justice programs is: who is going to pay for it?

4) FUNDING

Tension exists between theory and practice when a different way of doing justice tries to find a place in relation to the mainstream justice system. The challenge that community-based restorative justice programs face in securing and sustaining ongoing operational funding can be viewed as a symptom of that tension: the source and amount of funding has subtle and not-so-subtle implications for how those programs will operate. As one participant said,

The tension is funding but it's not simply funding...funding is interconnected and inseparable from the ways in which programs are realized (2:32).

By dictating the source of referrals and in some cases specifying the types of referrals a program can take, funding sources can implicitly constrain program development. Additionally, although limited, the availability of funding for programs that operate at certain stages of the justice process has influenced the direction of growth of community-based restorative justice initiatives in the Lower Mainland. Practitioners in this area need to ask themselves to what extent their source of funding defines who they are.

WHO DOES FUND RESTORATIVE JUSTICE PROGRAMS?

The program coordinators that I interviewed all receive (or have received in the past) at least some of their funding from one or more of the various levels of government (see Table 1 in Chapter 3 for a breakdown of sources of funding by program). One program had a contract from a provincial government ministry, which expired since the interview for this thesis took place and has not been renewed. Two programs receive funding from a combination of provincial and federal ministries. One began as a federally funded pilot project, for which the funding ended last year. Four programs received a small amount of

start up funding from the Ministry of Public Safety and Solicitor General, and operations funding from local municipalities, cities and districts; several of those also received in-kind assistance from the RCMP in the form of office space and use of office equipment. While most also receive small amounts of funds from donations and fundraisers, only one program coordinator appeared to be successful in pursuing funding sources in the community.

MUNICIPAL GOVERNMENTS

Several coordinators of community-based programs indicated that municipal governments are the largest and most stable financial supporters of their programs. When one pre-charge program that receives its referrals from the police began, the city provided core funding but expected the program to eventually become self-sufficient through fundraising or other project funding (3:17). Although this program has been unsuccessful in locating additional funding sources to cover their operating expenses the municipal government has continued to fund them. The coordinator described the application process that they go through each year as being the same for any other organization in the community that requests a grant: the program is required to outline whether they met their goals and objectives for the past year, what they hope to achieve over the coming year, and how they will measure their outcomes. As the program staff and not the city set the targets, this source of funding has implications for the local control of the restorative program.

Another program in a different city initially felt required to justify why the municipal government should fund a program in an area that was viewed as a provincial responsibility: the coordinator was told by the city that it was “provincial downloading” (4:49). Although the coordinator was fearful that the municipality would stop funding the program unless they also secured provincial funding, this did not turn out to be the case and the city has

become one of the program's greatest supporters, even lobbying the provincial government (albeit unsuccessfully) for additional funds. Furthermore, the mayor was quoted in one of the local papers as saying "we get the most return from this investment than we do on anything else that we fund" (4:5).

PROVINCIAL GOVERNMENT

The provincial ministry that is most involved in the provision of restorative justice with community groups in BC is the Ministry of Public Safety and Solicitor General (MPSSG) through its Community Accountability Program (CAP). This Ministry provides what the Law Commission of Canada (2003) would term the "least interventionist approach to program development" as they offer "support and incentives...to communities wishing to develop participatory projects" (196). MPSSG provides start up grants of \$5000 and small amounts of ongoing funding (\$2500 per year) to volunteer-based community programs that take pre-charge referrals from the police.³⁴

In return for funding, the Ministry collects quarterly reports from programs detailing the ages of participants, the number and type of referrals that the program received, as well as the compliance rates for agreements made during the course of participation in a restorative process. In addition, the Ministry requires programs to follow the guidelines set out in the CAP manual, which include such things as types of offences that are eligible for referral, and guidelines for conducting a conference and maintaining confidentiality (Ministry of Public Safety and Solicitor General 2004).

³⁴ See the Ministry of Public Safety and Solicitor General (2004) for information on criteria. The Ministry also offers training and opportunities for networking through regular regional workshops, which are free and open to funded programs and interested community members. The Community Accountability Programs Information Package (Ministry of Public Safety and Solicitor General 2004) provides an overview of restorative justice approaches and models as well as program design advice.

The Ministry does not intend to provide funding for the operation of restorative programs. The initial grant is meant to help get a program up and running, and the small grant provided to qualifying programs each year is allotted for training. The Ministry representative that I spoke with viewed the lack of funds for restorative programs as “a good tension because it forces everybody to be more creative and work more cooperatively” (11:5) and suggested that lack of funding is not an insurmountable challenge. Through the Community Accountability Program, the Ministry has changed the face of restorative justice in BC by encouraging the development of programs at this level.

A second provincial ministry that is involved in restorative justice is the Ministry of Children and Family Development (MCFD). In the past MCFD contracted out some of its services to community agencies. This policy changed recently, however; and one program in this study that took referrals from probation at the alternative measures (now extra-judicial sanctions) stage of the court process was affected by the change when their funding was cut. This Ministry funds the conferencing specialist probation officers and, in that way, is still involved in funding restorative justice.

FEDERAL GOVERNMENT

The Department of Justice as part of its Youth Justice Renewal Strategy provided funding for one of the programs for one year. When the pilot period ended the agency was unable to secure funding to pay the coordinator of the program a salary and so he worked on a contract basis facilitating cases if they were referred to the program but not promoting or developing the program.³⁵

³⁵ The agency has since decided to fund this as a full-time position using agency funds in the hopes that at some point another source of funding can be established.

A program that serves Aboriginal clients is funded by a cost-sharing agreement between the federal and provincial ministries in which the federal government matches the funding that the province provides for the program. This agreement created challenges a couple of years ago when a new provincial government made cuts to social services that affected the amount of funding the province contributed to the program. Creativity and the support of individuals working in the criminal justice system was required to find a way for the federal government to contribute more than 50% to the program's budget in order to maintain the level of service provided by the program. The coordinator said,

that's how fragile things are...We had done all this work and trained all these people and built all these relationships and everyone had said that they were happy with what we'd been doing and for reasons that appeared to be purely financial we were facing extermination...We were going to close our doors. And so through the political will of one individual who saw value in the program despite the assistant deputy minister's decision, we found a way to continue the program (2:24).

IMPLICATIONS OF GOVERNMENT FUNDING

The philosophy of restorative justice emphasizes community empowerment, community control and grassroots program development but the reality is that government coffers appear to be the most apparent source of funding for restorative justice programs. Some participants suggest this is the case because many programs in BC have grown out of government initiatives rather than through an organic need in the community. Furthermore, many practitioners feel that funding restorative programs is a government responsibility, even though it is risky to rely on any one source of funding and particularly dangerous to rely strictly on government sources. Additionally, program coordinators maintain that they are bogged down in the day-to-day operation of programs and do not have the time, energy and resources required to seek out and secure alternate sources of funding.

In order to manage the large number of cases before the courts, the criminal justice system has adopted a number of alternative methods of addressing offending behaviour outside of the court process. In addition to the controversial use of the term restorative justice by community-based justice programs mentioned earlier, these diversionary alternatives offered by the formal justice system have been misconstrued and are often mislabelled. One participant raised the concern that the term “restorative justice has been used and abused as a label that’s put on anything that’s alternative to the justice system” (3:41).

Another participant pointed out that the “provincial embracing of restorative justice” (2:3) under Attorney General Ujjal Dosanjh in 1997-98 that gave rise to government-sponsored Community Accountability Programs (CAPs) and resulted in alternative measures being considered a place to realize restorative approaches, also contributed to the confusion surrounding the use of this term. The government at that time encouraged but did not mandate restorative approaches in CAPs and alternative measures; rather they left it up to the programs themselves to set their own direction (2:3). The result was a proliferation of programs taking referrals from police at the pre-charge stage of the court process, some of which could be considered fully restorative and others that could be considered pseudo-restorative.³⁶

³⁶ Because they substitute members of the general public for more direct stakeholders, community accountability panels have been criticized as an example of a less restorative model (Olson and Dzur 2004) that has been supported by Community Accountability Program grants. Community accountability panels or neighbourhood accountability boards “determine appropriate sanctions for offenders who have committed crimes in the community. The board usually consists of three trained community members who meet with the offender and his or her family. Often the victim and his or her support group are involved as well. The community members hear from all parties present, and the circumstances of the crime are discussed... After the process is complete, the board decides on appropriate reparation measures. An agreement is then drawn up that the offender is expected to fulfill.” (Ministry of Public Safety and Solicitor General 2004:11-12). This criticism is recognized by the Ministry as they cite

One participant criticized the development of the Community Accountability Program as coming “top down from government without people truly broadly understanding what restorative justice is” (3:53) and expressed concern that programs that were historically diversion programs or alternative measures programs were erroneously placed under the restorative justice umbrella with this development due to CAPs use of the term ‘restorative justice’. Another participant emphasised that, though often treated as one and the same, “alternative measures and CAP programs are not synonymous with restorative justice” (2:3).

One participant suggested that the lack of grassroots origins of the programs supported by the Ministry of Public Safety and Solicitor General has created challenges in this area, saying,

The difficulty is that the provincial government in starting this initiative [Community Accountability Program] has not supported it in any event and yet the organizations that have come up under that still feel that they want to keep looking to them as the people to solve their problems. I think it’s all very muddy and I think it all has to do with the fact that it really didn’t come out of an organic need defined in the community often (3:37).

Many people are of the opinion that the assistance provided by the Ministry of Public Safety and Solicitor General is not enough,³⁷ and that the responsibility for addressing the shortfall should not be up to the community. As one participant said,

Sharpe’s (1998) comments that while “justice committees and panels almost certainly embrace the aims of restorative justice...they fall short of the practice of restorative justice when panel members make decisions on behalf of the victim, offender, and the community most closely affected by a crime” (Ministry of Public Safety and Solicitor General 2004: 11-12).

³⁷ The person that I spoke to at the Ministry of Public Safety and Solicitor General recognizes that some programs may need more funds than others due to caseloads and numbers of volunteers, while the flat funding scheme does not recognize those differences. She said some programs “had 200 referrals last year and [have] 50 volunteers.” These programs “may need more funding for training or for volunteer appreciation than a program that has two volunteers and 10 referrals in a year” (11:34). She observed that not all programs are seeking an increase in the amount of funding they receive: some have not applied for more funding this year because they have not spent the money they received last year.

The notion that you can give \$5000 in seed money and maybe \$2500 a year for the next few after that and it's going to be sufficient to [create] the infrastructure for each of those communities to run high quality programs and get high quality training, that's a little bit of a stretch for me. And then to look to those communities and the businesses in those communities to provide all the in-kind support and the rest of the infrastructure that it takes to run a high quality program? I just don't buy it (9:29).

Another said,

There was discussion when the CAP programs came to be through AG [Attorney General] Department back then that there would be some sort of funding formula designed and the communities would receive this based on their caseload or whatever [but this has not happened] (8:39).

Although some participants struggle with the constraints that come with government funding, they do not see many alternatives available to them. As one respondent said,

[There are] very few other options for funding. Who wants to fund a program that works with offenders?...Who funds the criminal justice system?...it's funded by government. So how can [the government] say 'you don't have to fit neatly into our thinking in order for us to support what you're doing'? (2:32).

While there may be some non-governmental options that can provide grants for projects or capital expenditures, several participants emphasized how difficult it is to find funding to sustain operations other than through the various levels of government (3:17, 8:39, 2:32). There is a strong feeling that the government should fund this aspect of restorative justice programs. As one participant said,

We're getting lip service about how much the governments are supporting us but it's not being followed through with actual funds to support the operations funding for the programs. And I mean, this happens over and over. Somebody will get a really wonderful idea about something and there'll be start up projects and this and that and then there's nothing to sustain them. And it's fine to say your communities need to sustain these programs but on the other hand I think that the provincial government and the federal government are still part of our community and they should be participating in some way, in a bigger way, I feel, than what's happening (8:35).

This respondent went on to say, “this is not a community-based challenge or issue – crime affects all of us and our youth in particular are our future. It is everyone’s challenge at all government levels” (8:39).

Relying on any one funding source can be fatal not only because the viability of the program is threatened if that source ceases to exist but also because the program is subject to the decisions of the funder and less able to make independent decisions. Discontinuation of government funding in particular is always a threat as shown by the example related above regarding the Aboriginal program.

Another program coordinator had this to say regarding government funding,

We’re impacted every time there is a cut [to government budgets]...if there’s any contest [of whether to fund the alternative or the mainstream criminal justice response] then the first thing to be terminated is the contract for the ‘soft alternative’ (9:1).

A respondent who is looking at moving away from government funding says that relying on government funding results in continual uncertainty regarding whether the program is going to be able to continue operation or not (1:65).

Maintaining a diversity of allegiances and connections with regard to funding can increase the autonomy of programs. One program funded strictly through the government was faced with losing their contract and given a choice of either mentoring the people that were given the contract or “turning out the lights” and, as the program coordinator commented, “those are the kind of value crunches that the funding decisions have us in from time to time” (9:3).

The lack of stable funding options creates challenges for maintaining and developing restorative programs. As one participant said:

I don't want to say that programs are helpless [but] the reality is that only a couple of people are running these programs on very minimal amounts of funding and that their ability to grow a program and be able to go out and find other means of funding to allow the program to fully realize what the community wants it to do is incredibly challenging and there are only a few people in any walk of life that really have the skills and the motivation and the energy to accomplish all of those things (2:14).

The work of locating and applying for grants or organizing fundraising events often falls to program coordinators, and according to the participants, finding, acquiring and sustaining the funding just to maintain day-to-day operations takes up a great deal of their time. Respondents suggested that it is difficult to move forward, expand, and be creative when a large part of their time and energy is spent submitting proposals and writing reports to their funders. This struggle just to keep afloat can impact the program coordinator's ability to pursue other avenues of referrals, to train volunteers, to implement evaluation tools or to fully meet the aspirations of the community.

The coordinator of an Aboriginal program suggests that adequate funding for Aboriginal programs is needed in order for the program to provide more than just an indigenised response. As he says,

A big part of my job has become looking for proposal opportunities to provide services that actually meet community needs in a way that the community feels comfortable with, not in a way that's just doing whatever we can...Our program involves the whole notion of an Aboriginal justice program...it has a much broader mandate than the restorative justice process itself. It's about self-determination and it's about reducing the over-incarceration of Aboriginal people in the jail system. And Aboriginal programs also differ in other ways [such as] issues of spirituality and community connectedness (2:6).

Fortunately, the advisory committee for this program "is very tuned into the notion of what we can accomplish with the funding that we have and [does not want to] just become another alternative measures program" (2:6).

Restorative justice, if not funded properly “will amount to little more than a useful, cost-effective appendage to the criminal justice system” (Woolford and Ratner 2003:185). Worse than that, program coordinators or boards facing funding crunches may feel they have no choice but to pursue initiatives that do not fit with the goals of their organizations.

In the face of revenue shortfalls, the board or management of an agency may feel pressure to compromise the quality of service in order to obtain funding. For example, one participant talked about how the executive director of the agency in which she works suggested that they attempt to secure funding from the Ministry of Public Safety and Solicitor General’s Community Accountability Program in a number of different jurisdictions in the hopes that if they received several grants they would have enough funding to pay the salary of the coordinator. The coordinator vetoed this suggestion on the grounds that the agency would not be able to provide adequate services to all the different jurisdictions.

Another example of the possibility for disconnect between the values of restorative justice in the face of lack of funding, was related by a program coordinator who feels that their board will:

kind of bend over backwards to accommodate what the government wants to see or even modify what we do just to suit funding requirements...[for example the board was] pursuing a particular initiative because there was money in it – working with disabled people and restorative justice. And I’m like, back up...Whoever said that we (a) want to take this route; and (b) we don’t even have an expertise working with disabled people...What about ‘do no harm’? So the values definitely get compromised because it’s so under-funded...you end up chasing things that really don’t make sense for your organization and for restorative justice (4:2).

The number of referrals processed can be a factor in maintaining funding. With the pressure to increase their referral numbers, programs can find themselves in the difficult

position of having to take on referrals that do not meet the criteria of their funders or, alternatively, having to manipulate the system so that a case will “count” towards their quota.

One participant whose program takes referrals from Crown Counsel through alternative measures gave the following example to explain this:

If you take a referral [pre-charge] from the police, it doesn't count towards your funding from the Ministry of Children and Family Development...so what a program could do in that circumstance is if they're approached by the police saying 'would you be interested in taking this referral?' the program could say 'yes, this is an appropriate referral for our program. We'd very much like to have it and our resources are so tapped right now that the only way that we can take it is through a recognized funding mechanism so could you just write on your police report that we've met with such and such a program and that they've...agreed...this particular case is appropriate for them' then it comes through that mechanism. You work against the whole spirit of restorative justice by doing that and further processing the individual (2:10).

As this suggests, one of the implications of being dependent on government funding is that the government then has the power to define what counts in relation to program operation, and this is reflective of a particular model of justice. The statistics requested by a funding source to justify the existence of the program provide an example of how the definition of who counts might impact a program: the government funders for one program provided forms that asked for information regarding only the number of offenders that were referred to the program; statistics regarding victim participation were not requested as victims were not counted as clients. The coordinator took exception to counting the number of offenders accepted into the program as he felt it did not accurately reflect the amount of work the program is doing. He had this comment:

If you have an offender and five victims...the person's say B&E'd five houses, [you have] five cases and it's going to take all the prep work and the work up and probably five individual victim offender meetings, if not more, to process that one referral. You want us to count that as one? That makes no sense to us (9:17).

The theory of restorative justice advocates transformation, healing and change. In order to achieve this restorative programs promote changing the perspective regarding the proper client of the criminal justice system to include victims as well as offenders. In addition to the statistics called for on the government forms, program personnel also provided information regarding the numbers of victims who participated, and were eventually successful in convincing their funders that that was a more accurate reflection of the work the program actually did. As the coordinator said,

And we swam upstream on that for twenty years until they finally let us do it our way and somebody bought the rationale. And frankly, it took advances in victim's rights and victim service for them to see maybe the victim is our client, because the offender was always the client. And there are lots of folks that still can't get their head around the fact that maybe the victim is also the client of the criminal justice system (9:17).

One participant suggested that securing funding is not a problem that is unique to restorative justice programs – many other non-profits experience the same funding challenges that force them to question how they can work collaboratively and creatively and think “outside the box” (3:19). Several of the program coordinators that I talked to discussed the desire to seek out sources of funding that were not government related. One coordinator in particular appears committed to seeking out alternative sources of funding, to the point of hiring a fundraiser on the understanding that the individual will receive a percentage of the funds he or she is able to secure for the program.

One coordinator is attempting to create two fundraising events that will be their “signature events” in the community each year. One of these events is a youth arts auction, which fits well with their mandate of empowering young people. Youth under the age of 25 are invited to submit works of art to be put up for sale in a silent auction, with the artist receiving half of the final bid amount and the other half going to the program. Last year

they paid out \$1500 to youth artists, and the program coordinator said that the expressions on the artists' faces when they received the cheques were well worth the whole event. By linking young people with professional artisans in the community so that they can receive pointers on how to make their work professional and saleable, the program hopes to increase the connection of youth to their community and vice versa. Young people are involved in other areas of the event, providing entertainment and serving staff for the evening. This type of an event can demonstrate to the youth of the community that they are valuable while also raising money for the program.

In addition this program has received financial support from individual community members. Aware that the program was facing financial problems, a volunteer of the program collected \$500 from his co-workers at Christmastime to contribute as a way of showing support. An anonymous community member donated another \$20 000 to set up an endowment fund for the program. A foundation administers the fund and provides the investment income to the program to be used "at their discretion," which the program coordinator declares "the best phrase in the world." Individual donors, rather than making donations directly to the program, can contribute to the capital fund.

RELATIONSHIPS WITH GATEKEEPERS

Crucial to the success of restorative justice programs is the ability of practitioners to develop positive relationships with the 'gatekeepers' of the criminal justice system – Crown Counsel, police and probation. The programs included in this study all rely on criminal justice system personnel for at least a portion of their referrals. The quality of relationships with these referral sources directly impacts the number of referrals a program may receive, which in turn may impact the level of funding a program receives.

These relationships are especially important due to the precariousness of funding in this area. Often the success of a program comes down to the political will of one or more persons in the government; their support is predicated on a thorough understanding of the program and trust in the program personnel, fostered through sincere dialogue. The challenge is that the information flow between government agents and restorative programs appears in many cases to be decidedly unilateral. As one participant said,

Are those people in the criminal justice system willing to work closely enough with those community-based programs to understand what they're about? Are they open to having meetings with those programs so that they can understand how they work and perhaps increase the confidence to actually move more cases to them? I would say that dialogue has never occurred...while sometimes there's glimmers of 'yes, we're listening' from a government perspective, it's more like 'here's the legislation. Here's how we do things. Any questions?' (2:5).

Thus, concentrating on working with criminal justice system personnel who are well disposed towards restorative programs rather than trying to 'convert' people who are not supportive is a common theme, as is seeking out support from multiple levels within these bureaucracies.

There was an understanding among respondents that the belief that restorative based processes should be offered to offenders, victims and communities is not a widely held point of view among criminal justice professionals, although some individuals working within the system see the value of a restorative approach. A number of participants expressed the opinion that they feel their time is best spent working with people who are receptive to the service that they offer. As one person put it,

I don't think we're going to go out and convert people that really don't want to do this (3:23)...I think it's working with those folks [who are supportive] and building those relationships and realizing that it will grow organically...we go now to places where we have those connections and those relationships rather than trying to convince a watch. [Some officers] may not be really supportive...or may see this as only being appropriate around something that we don't tend to agree with. We're not going to spend a lot of time and resources trying to convince those folks. We're going to...maintain relationships with police officers who have had positive experiences with the program. They're going to continue to refer and have it grow that way...that probably for us feels far more authentic and seems to make more sense (3:25).

Another participant offered a story to illustrate the significance of this point,

I'll give you a little metaphor, a story, for why I work the way I do, and I'm grateful for this. It goes way back to 1980 when we were trying to get [referrals of] ...first time property and minor assault and B&E offenders – the kinds of things that are divertable crimes...and it just felt like I was beating my head against a brick wall. We were getting nowhere despite the fact that we thought we had a pretty good model...and something to offer. So anyway, I remember lying in bed one night, sort of in this limbo-land between sleeping and waking and I had a picture of Kingston penitentiary, the prison there, and beating my head against this big oak door, the big historic door on the Kingston prison, and I'd bloodied my pate and I got no further. I was definitely not breaking into this prison. I suddenly had a picture of the lock on that old historic door and I thought 'every lock has a key, every key turns tumblers, every tumbler has pins, probably no more than five. Who are the pins?' And we went to five players in the criminal justice system who lined up and said 'I buy into this. I can assist you with this. I can do this part. I can do this part.' The pins dropped, the tumbler turned, the door opened and we were in. And I've used that metaphor again and again for how we go about getting things done in what seems impossible circumstances. So it's really a question of finding people with similar value sets. And maybe this ideological clash isn't the difficulty that it would be otherwise (9:3).

Another participant talked about the difficulties working with an institution like the criminal justice system but said although "bureaucracy can be inherently problematic" it is possible to find individuals who work within that bureaucracy that are not "working purely in bureaucratic notions and hiding behind that" in order to get things done (2:32). This person also said:

I want to be careful in painting the government black because there are a lot of really good individuals who have been very supportive of our program and have looked for innovative and creative ways to do things with us to meet the goals of the program (2:14).

One coordinator of a pre-charge program that receives referrals from the police emphasized that she treats the police as a client by ascertaining the needs of the officers in relation to the program and attempting to meet those needs, just as she does with the program's other clients – victims, offenders and the community. This is reflective of the view that the police environment and way of thinking is simply another aspect of the operation of a restorative program that must be dealt with in a positive and constructive way in order for the program to succeed. The hope is that by understanding the opposition of the police and incorporating solutions into a long-term plan, over time the resistance to the program can be reduced.

Other program coordinators focus on developing a sense of camaraderie with the police officers who make referrals to them in order to gain support for their program. One participant emphasized the importance of being aware of the perceptions of these gatekeepers, purposefully using humour based on those perceptions in order to gain their attention, and then explaining the program in language the police are comfortable with in order to promote their program,

We talk about the program and we use a little sarcasm. They do think that we're a bunch of radicals who sit in a circle and hold hands and sing Kumbaya and we're the warm fuzzies. We joke about it and say we *are* the warm fuzzies but that isn't what it's about. We have to almost sell it to them by saying we want to hold kids accountable in a different way (12:31).

Another participant talked about the difference between two police detachments that they received referrals from and how the ability to develop a more informal relationship with

the police at one detachment resulted not only in a steady flow of referrals, but also in obtaining information about the program that she would not have learned otherwise,

There's one officer that every time I go over there he says 'step into my office' and we go outside to have a smoke and then I get really good feedback, honest feedback about how we're doing. So that's really useful (4:25).

A commonsense view that was expressed by most respondents was that the more support on a number of different levels for your program the greater the chances of success. One participant offered this opinion "[you] need support in leadership roles within your referring source but I think you also need it on the ground" (3:13). In the case of pre-charge programs, it is the officers that make arrests who use their discretion to divert a case to a restorative process. As another respondent said "it's one thing for the Sergeant and the Inspector to get what it is but they're not going to be the one making the decisions on all these cases" (1:18). Examples from two different programs will illustrate this point.

One program that takes cases from Crown Counsel at the alternative measures stage of the court process was not receiving a significant number of referrals. When attending a conference, the program coordinator was excited to hear the administrative Crown Counsel express support for the program and ask the prosecutors in attendance to consider more than just first time offenders for referral. After the conference, at the request of the program coordinator, the administrative Crown Counsel attempted to set up a meeting with the front line staff to raise program awareness and hopefully increase the number of referrals to the program. She was not, however, able to arrange a meeting and told the coordinator there was some resistance from the local prosecutors to meeting to discuss the program. In this case, while there is support from higher up, cooperation is lacking from the people who actually have the power and discretion to make referrals to the program.

Another program coordinator expressed a similar concern although in the opposite direction: in this case the opposition of those in management created an environment in which the front-line staff did not feel able to support the program. The Inspector in the local detachment was not supportive of the restorative program and the coordinator felt that this resistance “filters down in that kind of paramilitary organization” with the result being that “the younger officers [who] are more amenable to problem-solving approaches like restorative justice...are hesitant to refer because they don’t want to get backlash from their superiors” (4:26). In the past an officer who was particularly helpful to the program was removed as liaison between the program and the detachment. The program coordinator attributed this to the degree of support the officer showed to the program and indicated that the current liaison officer is not as supportive.

In order to gain the support of gatekeepers, programs must have access to them and the opportunity to foster working relationships that will encourage the flow of referrals. Recent provincial budget cutbacks that resulted in the closure of community courthouses and the elimination of the public defenders for youth impacted two of the restorative programs I spoke with. One participant related how in the past they were able to sit down with the Crown Counsel and discuss possible cases. Since the courthouse in their community closed and the files are sent to another jurisdiction, access to prosecutors has become much more limited and this has had an impact on the number of referrals the program receives as well as the level of seriousness of those referrals. Now,

It's a very difficult thing to get in the fortress at the [courthouse]...it's all bullet-proof glass and buzzers to get in and maybe all that's necessary but boy it sure guts the relational aspects and what we had previously...in those days you could actually get to the Crown and you could negotiate the referral of even the very, very serious matter that normally never would be given to an alt measures program or anything like a victim offender mediation program (9:21).

Although this is unintentional on the part of the criminal justice personnel involved, as Olson and Dzur (2004) suggest “[s]ometimes professionals quite literally shrink the space of participation when they decide public issues off in professional buildings and administrative complexes, far from potential sites of participation” (149).

According to one participant, a second courthouse closure has changed the nature and characteristics of the courthouse in which the cases from both jurisdictions are now heard. The courthouse is much busier and this makes it difficult to initiate contact with offenders, Crown Counsel and defence counsel. One participant said of the current state of the courthouse: “it’s not very intimate and even having people sit in court and see what’s going on and speak to matters is difficult” (10:17).

Further complicating matters, the legal services society no longer has staff lawyers available to take on youth criminal cases. In the past, a small number of staff lawyers handled a large percentage of the youth court cases, and attended regularly at the courthouse. These positions have been cut, and the work of the staff lawyers is now spread out among a whole host of private bar lawyers resulting in, according to this participant, more lawyers at the courthouse who are unfamiliar with restorative programs available to their clients, and who are not acquainted with the people who offer these programs. Often program coordinators find that the process of receiving referrals is more efficient and effective if there are fewer referral sources with whom relationships need to be built (5:27; 6:13; 10:17).

While access to gatekeepers can assist program employees in building up relationships with potential referral sources, it is possible to be *too* close to them. Three of the programs included in this study have offices in police detachment buildings; two of the three expressed concern regarding the impact of this proximity to their referral source while the third said that the police were non-intrusive in terms of the decisions made by the program. One respondent who expressed concern said,

If you are in-house it's easy to get pulled back into their mentality...even not being co-located would kind of give you that pull away – that you're doing your business and they're doing theirs (12:34).

Another participant expressed ambivalence about being housed in the detachment: although this site facilitates a working relationship with the police officers that is crucial for the success of the program,

It has also create[d] confusion about who we are, where I fit into this. Do [the police] see me as...an extension of the detachment or do they recognize that we're a separate organization? (3:12).

CHAPTER FIVE: DISCUSSION AND CONCLUSION

THE FUTURE OF RESTORATIVE JUSTICE – DIVERSE PERSPECTIVES

Restorative justice challenges notions of who “owns” criminal justice by questioning accepted definitions of crime and justice, and affirming that victims, offenders and the community should be involved in dealing with the aftermath of events in which harm is caused. Restorative justice practitioners are on the front line of this challenge and walk a fine line between being tied to the criminal justice system and finding ways to be true to the community-based roots of restorative justice.

One of the most fascinating aspects of this field is the variety of perspectives, experiences and goals of the people working in it, a diversity that contributes to an exciting but uncertain future for restorative justice. The biggest distinction to be made is between those practitioners who are based in the community and see restorative justice at least in part as a way of regaining community control over justice, versus those who are part of the mainstream system and see restorative justice as a way to broaden the mainstream repertoire while maintaining the level of standardization and professionalism they believe should characterize such processes. That said, there was more variation among the former group than the latter.

THE VIEW FROM THE COMMUNITY

At one extreme is the restorative justice promoter who sees virtually unlimited potential for restorative justice as the future of justice, and, while not believing it to be a

panacea, can envision a role for it in almost any setting. This person is committed to a theory of restorative justice that emphasizes flexible responses to justice issues that meet the needs of people directly affected by crime and conflict. Recognition that restorative justice is a difficult concept to define is accompanied by worry that it will become a meaningless catchphrase for practices that are contrary to the philosophy and harmful for victims, offenders or the community. This concern extends to the involvement of criminal justice employees in the provision of restorative services, as the restorative justice promoter questions whether someone trained to work in a retributive system that does not tend to be connected to the community can properly facilitate restorative processes.

Individuals who espouse this view feel frustration when interacting with criminal justice system personnel who see restorative justice services as no more than an adjunct to the “real” justice system. Not wanting to restrict community-based restorative justice to minor cases, the restorative justice promoter emphasizes the need for adequate funding for training and access to resources to increase the capacity of community-based restorative justice programs to take on more serious cases.

Other community-based supporters of restorative justice have more modest aspirations. Although these persons also express a desire for more secure funding and increased access to training for community-based restorative justice groups, the restorative justice supporter sees these groups as playing a more limited role in the justice process than is envisioned by the restorative justice promoter. While confident in their ability to facilitate restorative processes for relatively low-level offences, and in their belief that community groups can provide a valuable service, such persons feel that the more experienced offenders

or more complex cases are better dealt with by the criminal justice system, with the hope that the system will adopt a restorative approach as far as possible.

A unique perspective among respondents are those who speak for Aboriginal justice. Aboriginal processes may mirror restorative principles but are rooted in different histories and propelled by different motives, particularly a realization of Aboriginal communities' rights to self-determination, which can be said to include the right to develop distinct systems of justice. To the extent that their aspiration is for community-based processes, their concerns overlap with those articulated by restorative justice promoters, particularly with respect to community ownership and community involvement in the provision of justice services, and the need for sufficient funding to ensure that Aboriginal justice initiatives do not simply become indigenised responses.

A SYSTEM-BASED VIEW

Criminal justice professionals in the mainstream system may be involved in restorative processes in a number of different ways: they may facilitate restorative processes themselves; provide referrals to a community- or system-based restorative program; be involved in creating policy regarding the use of restorative justice; or be responsible for liaising with restorative justice practitioners. Such persons perceive a positive role for restorative justice in certain situations, and see restorative services offered by community-based groups as part of a continuum of responses. To the extent that restorative justice might one day permeate the mainstream justice system, such persons would likely be happy to have external agencies address the less serious cases while believing that criminal justice professionals must retain control over the more serious cases. While some community-

based practitioners of restorative justice reject this view, others share the opinion that restorative resolutions can take place in both community- and system-based processes.

SUMMARY

Many respondents expressed concern that the term “restorative justice” is misused for responses that do not correspond with their understanding of the philosophy of restorative justice. Although ambivalent about the need for standards to be imposed for restorative justice, all practitioners and government personnel included in this study agree that adhering to generally accepted principles and practices is important to protect the integrity of the work.

Respondents suggested that if standards are adopted they should not be restrictive as restorative programs must be flexible in order to meet the needs of the communities in which they operate and the community members they serve. Several participants suggested that this issue could be dealt with by focussing on best practices, competencies and skills. One community-based program coordinator pointed out that restorative justice is still evolving and that the imposition of standards should not stop practitioners from learning.

Community based restorative justice practitioners do not suggest that the government should impose standards for restorative practices, and the government does not seem eager to do so at this time. Under the *Youth Criminal Justice Act*, for example, the province can implement rules regarding conferences conducted by community programs. However, “BC has chosen not to impose rules, but the Conferencing Working Group³⁸ is developing guidelines” (Hillian et al. 2004: 349).

³⁸ The Conferencing Working Group is “made up of representatives from the Ministries of Attorney General, Public Safety and Solicitor General, and Children and Family Development” (Hillian et al. 2004:347).

The Ministry of Public Safety and Solicitor General has guidelines in place that are “meant to assist” the restorative justice programs they fund (Ministry of Public Safety and Solicitor General 2004: 44). The Ministry does not enforce these guidelines, except through the rejection of future funding applications if a program is non-compliant, but if,

as a result of a police initiated conference, the police decide to refer the young person to a Community Accountability Program, the police will inherently have an interest in the process and outcomes, as they are accountable under the *Police Act*. If a Community Accountability Program process is deemed to be flawed, clearly biased, unfair, or lacking due process, the officer is obliged to withdraw the matter and take appropriate action (Ministry of Public Safety and Solicitor General 2004:44).

A group of practitioners in BC met several times in 2002 to create the Charter for Practitioners of Restorative Justice (CPRJ).³⁹ The purpose of the CPRJ is to articulate the values and principles of restorative justice that guide practitioners in their practice.

Braithwaite (2002) suggests, “top-down accountability of some form is needed with top-down standards that are contestable bottom-up” (563). One way that this could happen would be through developments such as the CPRJ, which is an articulation of values that has come bottom up from practitioners.

The community-based agencies that provide restorative justice services in the Lower Mainland operate in a wide variety of settings with various sources of referrals, and tend to be relatively small, with limited funding. Each has to some extent continually reinvent itself when it comes to good practice in order to respond to the community in which it operates. Each also has to respond to the changes that occur in the criminal justice system.

Community-based practitioners may need to find ways to balance the values of flexibility

³⁹ The Charter for Practitioners of Restorative Justice can be found in full at <http://www.sfu.ca/cfrj/fulltext/charter.pdf>.

with the need for increased standardization if restorative justice becomes more accepted by criminal justice professionals who have a need for “quality control.”

In the Lower Mainland, a number of community-based agencies offer restorative processes in schools, prior to a charge being laid as well as at various stages of the court process. Recently, specialist probation officers have also begun to provide restorative conferencing for youth involved in the court system, which has raised questions regarding who should be doing this type of work. There is some concern that, due to the nature of the jobs and the content of their training, probation officers will not be able to facilitate restorative processes in ways that are consistent with the values of restorative justice.

On a broader level, this development also brings into question the *raison d'être* of the restorative justice movement, which is to challenge the idea that it is necessary to enlist professionals to deal with issues of crime and conflict. Community restorative justice groups have struggled in the past, and many continue to struggle, to gain a foothold. They face an uphill battle to maintain their funding sources and develop their programs. For some programs, obtaining adequate referral numbers to justify their existence is a challenge.

Community groups also face questions about whether they should be involved in the provision of justice services. A central issue appears to be the question of whether volunteers should be utilized for this work. Due to budgetary constraints for many community programs, the use of volunteers is a reality: the program would not be able to operate without them. More than that, many practitioners feel the involvement of volunteers is congruent with the principles of restorative justice in that it provides a way for community members to be involved in the work of the program. Government employees and one community-based coordinator whose program does not utilize volunteers expressed

scepticism whether volunteers have the skills, capacity and willingness needed to cope with more serious or complex cases.

Consequently, the question arises regarding which service providers get to take what type of referrals and at which stage in the criminal justice process. Many people, both practitioners and government employees, support the view that the continuum of behaviour that falls within the purview of the justice system justifies a continuum of responses that includes both community- and system-based services. While some community-based practitioners feel that facilitating restorative processes for offences at the lower end of the continuum fills a need in the community, others expressed concern that taking only low-level offences can result in the marginalisation of their program.

Certainly if community-based restorative justice programs are going to provide restorative services one major challenge they face is obtaining adequate funding to properly train and supervise their restorative facilitators or mediators. This becomes more important if a program accepts more serious cases. All of the restorative programs included in this study have received or do receive funding from various levels of government. A common complaint is that the amount of funding received by the programs is not enough and/or that there is a high level of uncertainty regarding the continuation of funding. Program coordinators find it challenging to seek out and obtain sources of funding other than from government. Woolford and Ratner (2003) predict that,

governments are likely to maintain their tenuous relationship with restorative justice programs, promoting the principles of restorative justice when it is politically useful, but not in a manner that requires meaningful expenditure of criminal justice resources...More importantly, since restorative justice programs have been successful in enlisting local volunteers and finding community donors, the federal and provincial governments feel no compulsion to increase the funding to these programs to any significant degree (185).

While municipal governments appear to be the most promising sources of funding for restorative justice programs, it is to the benefit of programs to be creative and seek out other funding sources rather than simply relying on government grants. Doing so will increase the stability and autonomy of programs and provide means for programs to engage the community in another way.

Wherever the funds come from, it is important for restorative programs to be adequately supported, or, as La Prairie (1999) warns “[t]he adoption of restorative justice principles and of community involvement may give the illusion of empowerment and partnership, while in reality it becomes ‘responsibilization without resources’” (150).

The number of cases a community-based program processes often affects the sustainability of that program. The quality of relationships practitioners have with criminal justice system gatekeepers can impact the number of referrals the programs receives, which may in turn impact their level of funding. Many practitioners observed that they concentrate on building relationships with criminal justice employees who are supportive of restorative justice rather than trying to win over people who are not interested.

DISCUSSION

The theory of restorative justice has developed through practice and, according to Ashworth (2002) “[o]ne consequence of this is that there is no single notion of RJ, no single type of process, no single theory” (578). The benefit is that it can support innovative, groundbreaking developments as communities attempt to create ways of addressing their own unique needs according to a restorative philosophy. As has been illustrated through this project, restorative justice currently occurs in a wide variety of contexts.

The possibility also exists, however, for restorative justice to go astray. As Zehr (2002) suggests,

Like all attempts at change, restorative justice has sometimes lost its way as it has developed and spread. With more and more programs being termed 'restorative justice,' the meaning of that phrase is sometimes diluted or confused. Under the inevitable pressures of working the real world, restorative justice has sometimes been subtly co-opted or diverted from its principles (6).

Restorative practitioners are anxious to ensure that as restorative justice grows, the practice remains true to its values and principles. These involve applying the values of flexibility, inclusivity and empowerment in a way that benefits victims, offenders and communities. There is not, however, always agreement on what that means or how it should be realized. As one participant said, "one of the biggest tensions...is being able to talk about [restorative justice] in a way that acknowledges the breadth of it without being judgmental" (3:41).

One way to guard against co-optation while also supporting cutting edge processes is to balance attention to practice with an emphasis on principles (Achilles and Zehr 2001). There are commonly accepted values that can guide restorative justice practice, such as providing the opportunity for the active involvement and empowerment of the parties affected by a crime. The people most affected by crime should be the ones most involved in resolving it by participating in a process that meets their needs without requiring them to adapt to the requirements of the criminal justice system (Toew Shenk and Zehr 2001). Programs should empower and encourage victims, offenders and communities to become involved in creating processes that suit them. These should be the touchstones of restorative practice.

Restorative justice provides an opportunity for communities and government to work together. As Schiff and Bazemore (2002) suggest,

As most conferencing programs are housed in private agencies but funded by government, this creates an opportunity for governments to empower communities to initiate and manage processes specific to their localities...[there is] an opportunity to consciously and conscientiously choose such a relationship (197).

A number of benefits can be seen by system-based responses and community-based responses working together. As Roche (2003) asserts,

The ideal is that restorative justice and state justice are mutually supportive: restorative justice programmes can gain benefit from state guardianship, while citizens' deliberations in restorative justice meetings offer the potential to reinvigorate the justice of the state (239).

Bazemore (2000) adds that,

If we really want to slow and eventually halt the theft of conflict from communities, restorative initiatives must seek to transform the role of government to one of community builder and facilitator whose mission is to strengthen the capacity of community groups to manage such conflict and trouble, and empower them to do so. Without this change in the system role, even the most pure and pristine, "fully restorative" programs may be doomed to become little more than an appendage of a formal system that continues to disempower community (472).

The challenge, however, is for government to support community without controlling grassroots initiatives. As Pranis (1996) says,

[Restorative justice] is an empowerment model which must clearly be grounded in grassroots commitment at a local level. State agencies are not typically oriented toward grassroots participation. Corrections agencies are generally very hierarchical organizations. Restorative justice is based on participatory decision making, from individual cases to system design. The state is challenged to provide leadership while not usurping local power...(497).

Restorative justice aspires, among other things, to change the way that conflict and crime is dealt with in our society. Looking to the criminal justice system for a response is a firmly entrenched method of dealing with a large number of issues in our society. It seems unlikely that small, community-based restorative justice groups are going to be able to transform the status quo unless they cultivate the support and assistance of the employees of the criminal justice system, and enlist the backing of key members of government agencies. As Roach (2000) suggests “there are strong pragmatic arguments that state officials should be involved if restorative justice is to reach those affected by state processing” (269). Olson and Dzur (2004) suggest that,

restorative justice needs the involvement of criminal justice professionals for several reasons. First, for the foreseeable future, restorative justice is unlikely to happen without them. Restorative justice theory tends to assume that restorative justice programs give back something the community wants, namely direct, hands-on control of criminal justice decision-making. What we see in practice, however, is a different story...reformers could not conceivably transform the criminal justice system toward restorative justice without the support and cooperation of some of the professionals now in charge to provide legitimacy with political decision makers (169-170).

The Law Commission of Canada (2003) advocates “a more intentional government strategy...to achieve significant change in our habitual response to conflict and conflict resolution” (187). Restorative justice programs themselves may need to consider a more intentional strategy to foster government support.

Olson and Dzur (2004) question the separation between the ‘community’ and the ‘state’ saying,

While not often explicitly articulated, the implied distinction between “community” and “state” pervade restorative justice theory...If the state and community are dichotomies, criminal justice professionals are clearly representatives of the state . . . By viewing the victim, offender, and community rather than the state as the central parties in criminal acts. Restorative justice theory seems to imply little need for criminal justice professionals at all (Olson and Dzur, 2004:145).

Even if according to restorative justice theory criminal justice personnel are not given a role, the reality is that they are engaged in many levels of restorative justice practice (Olson and Dzur 2004) from facilitating restorative processes to providing referrals to restorative programs to creating policy regarding the use of restorative justice. These people can also create the political will necessary to help community-based programs succeed by advocating for government support for them.

Providing access to restorative justice options at all stages within the adversarial criminal justice system can increase the use of voluntary, informal procedures (Walgrave, 2003). If restorative processes are only offered when cases are diverted from formal processing by police or Crown counsel, victims and offenders who could benefit from participation in restorative processes might not be given the opportunity. For instance, if Crown Counsel’s policy was not to divert certain types of offences, unless restorative processes are available within the court process the persons affected by these cases would not have access to this type of resolution. Moreover, if a criminal justice system gatekeeper decides that a situation warrants more intensive involvement, tracking or enforcement, while a community-based restorative justice program may not have the skills or access to resources that are necessary to deal with it, the persons affected should still be able to access a restorative process. Furthermore, if restorative justice is not offered at all stages, there is a danger that restorative responses will be limited as an approach only suitable for minor

offending; it may otherwise create groups of offenders – those who can be dealt with restoratively and those who are “too bad” for restorative justice (La Prairie 1999).

The question remains whether professionals or community members should provide these services. One participant offered this comment,

there are a lot of people who think that somehow the people who work for the government shouldn't have anything to do with restorative justice, that ... the government is somehow the enemy...except that they would like some money from the government so that they can do the work. Wait a minute, if the government provides you with the money, what does that do to you? (10:28).

If restorative justice is integrated into all stages of the mainstream justice system, however, care must be taken that it is not done in a way that compromises its values. With the idea that restorative processes should occur along a continuum of government and community responses, comes the danger that community-based practitioners will be relegated to dealing with only minor cases that do not warrant the attention of the justice system while the mainstream system continues to process the bulk of the cases, just in a different way. While some community practitioners may be content with a limited role, others worry that criminal justice system employees will not provide restorative services in a way that fits with the principles of restorative justice: that they will not make a conscious effort to consult with communities, create flexible processes that meet the needs of the participants and involve the community in a meaningful way, resulting in the loss of the potential for active citizen involvement.

In order to be true to the values of restorative justice, grassroots agencies need to retain a place in the delivery of restorative justice services. “Community groups that are at some distance from the state may be better able to preserve the legal pluralism of restorative

justice as an alternative to state centred forms of justice” (Roach 2000:269). It appears, however, that in BC criminal justice professionals will share the delivery of restorative justice services. The face of restorative justice is changing and, in some communities at least, there *is* now a continuum of responses that include both community-based and system-based services. This could prove to be a positive development but only if there is commitment by the criminal justice system to support restorative responses and a commitment on both sides to work together. As Olson and Dzur (2004) suggest “Professional involvement does not have to mean state domination and the exclusion or cooptation of citizens” (140). It can come in the form of partnerships with people who are supportive of restorative justice.

The theory of restorative justice contends that criminal behaviour has both a public and private dimension and that these are out of balance; restorative justice seeks to bring them back into balance by addressing the interpersonal while also giving the community a meaningful role (Achilles and Zehr 2001). The meaningful involvement of the community can help to ensure that restorative justice is not co-opted by the criminal justice system. As Roach (2000) suggests “[w]ithout nourishment from crime victims, women, Aboriginal peoples, and community groups, the fate of restorative justice will depend largely on its acceptance by criminal justice professionals” (277). If restorative services, both system-based and community-based, connect to the community then the community will feel ownership over justice issues. This can result in a positive impact the way the criminal justice system operates. The definition of community for restorative justice groups needs to be diverse and comprehensive. Furthermore, restorative justice programs need to engage the community in a variety of ways in order to reach those people who would not normally be reached.

It appears to be important to cooperate with the criminal justice system or face the alternative of remaining a movement of high ideals but with little practical impact on the system (Johnstone 2002). As Roach (2000) suggests, while,

There are legitimate concerns that criminal justice professionals will co-opt restorative justice to their own professional interests and habits...professional involvement seems necessary if significant change is to occur and if restorative justice is not to be a net widening add-on (270).

Restorative justice practitioners are eager to talk about how much training, thought and sensitivity goes into facilitating restorative justice processes. While they would say that they are closer to the community than criminal justice system professionals, they still must work hard to engage the community. They would not deny that they are, for the most part, well-trained, skilled and knowledgeable people, in other words “professional” or a “person who is highly skilled at doing something” (Oxford English Dictionary 2002). The difference between these new criminal justice professionals and the “old” ones is the desire of restorative justice practitioners to do justice differently by providing services based on empowerment and dialogue rather than deterrence and control. As new professionals in this area, restorative justice practitioners who work out of community-based agencies rather than the criminal justice system face the same challenges: providing a high quality service while remaining true to the values of restorative justice of empowering people to deal with their own conflicts.

As Mika and Zehr (2003) state “if restorative justice is to be true to its potential and vision, articulation of values and principles is crucial” (138). The success of restorative justice is dependent on sincere dialogue between all of those affected – from individual community members to restorative justice practitioners to criminal justice personnel to all levels of government.

STRENGTHS AND LIMITATIONS OF THIS RESEARCH

The objective of this research was to conduct an exploratory investigation of issues significant to the field of restorative justice by interviewing a targeted sample of people who have experience and knowledge of this area. Sampling diversity was ensured on a number of different aspects, which is compatible with an exploratory approach. Participants varied based on the setting and location in which they work to ensure a mix of community-based and system-based perspectives. The programs included also varied in terms of sources of funding, operational models followed, sources of referrals, point of entry into the criminal justice system, and client group with whom they work. Consequently, the respondents were able to provide a range of views regarding the research topic. The respondents all worked in urban areas and all were paid staff members. As a result the perspectives of practitioners operating in rural areas or those who work in volunteer-run programs are not included. In addition, due to the exploratory nature of this thesis, there may be programs in existence that were not included but that could offer another perspective on the research questions.

The interviews consisted of open-ended questions in order to allow the participants to direct the flow of the conversation and speak about the issues that were most significant to them. Palys (2003) suggests that “the more open-ended the question – and the more such questions one asks – the more one requires time, a relatively private setting, and good rapport between interview and respondent” (176). These factors were all included in this study. Each participant agreed ahead of time to devote approximately one and a half hours to the conversation, and each interview took place in a setting in which the respondent was comfortable speaking about their experiences.

My prior experience as a restorative justice practitioner had a positive effect overall on the interview process. Certainly it helped in the identification of an appropriately diverse target sample and helped open many doors. As a former “insider” it also meant participants did not have to “educate” me about basic issues and could use vocabulary and referents with which they felt familiar, which further facilitated rapport. If there is any worry it would be that, as a former *community*-based restorative justice practitioner, one might speculate that system-based participants may have been more reserved in their criticism of community-based organizations, or less assertive about the merits of system-based approaches. However, all respondents appeared willing to share their perspective. Also, my willingness to listen non-judgmentally, send back transcripts for their re-consideration, and honour everyone’s requests to refrain from publishing any *ad hominem* or other possibly intemperate remarks (plus the mere fact that several of the participants made these) all suggest that respondents were forthright about their views.

The questions asked varied from interview to interview according to the knowledge and experience of each person, as well as according to the flow of the conversation: I prepared a list of questions clustered around themes for each interview but adopted a flexible approach in order to be able to follow up on the responses of the participants that seemed to be connected in some way to the research question. A limitation to the use of open-ended questions and a flexible format is that not all participants were asked to respond to the same questions, which makes explicit comparison between responses difficult. In addition, due to the complexity of some of the issues covered, the comparatively short length of the interviews and the range of topics covered did not provide enough time for in depth discussion of all of the issues.

FURTHER RESEARCH

Given that many restorative justice programs, whether community-based or system-based, rely on criminal justice system gatekeepers for support and referrals, further research could seek the perspective of police, probation officers, Crown Counsel, judges and correctional officers regarding restorative processes. Issues to address should include the perceptions of criminal justice system gatekeepers regarding the respective roles of community-based and system-based initiatives; the role of the community in justice issues; and their perceptions of their role as gatekeepers in restorative initiatives.

A further area of interest is the impact of legislation on the practice of restorative justice. The *Youth Criminal Justice Act* is now only a year old but has already had some influence on the field of restorative justice. It remains to be seen how this legislation will change the operation of the youth criminal justice system and particularly what effect it will have on the use of restorative initiatives at various stages in the criminal justice process. Of particular interest in BC is whether the trend towards professionals facilitating restorative processes will continue.

Much has been written about the need for standards for restorative justice, and the need for those standards to be applied in restorative practice (see Achilles and Zehr 2001; Ashworth 2002; Braithwaite 2002; Roche 2003; Schiff and Bazemore 2002; Von Hirsch et al. 2003). In light of the diverse number of approaches and settings in which restorative justice is being realized in the Lower Mainland, it would be interesting to compare what standards are considered important and how they are applied in practice, as well as whether, why and how restorative practitioners incorporate documents such as the guidelines produced by the

Ministry of Public Safety and Solicitor General and the Charter for Practitioners of Restorative Justice into their work.

Finally, one of the concerns expressed regarding community groups doing this work is the levels of training and the abilities of volunteers, it would be worthwhile examining that issue further, perhaps through surveys of existing volunteers.

APPENDIX A

INTERVIEW QUESTIONS

- How did your program begin? What steps were taken? Who was consulted?
- Where do you receive your funding?
- What is the process by which your funding is approved?
- Are numbers of referrals an important issue on which your funding is renewed or not?
- Are there any issues on which you and your funders disagree?
- Who specifies things such as client type, case type and caseload?
- How are these decisions made?
- What types of cases have you taken?
- What makes a good referral?
- Who have you received the referrals from?
- Can you describe for me the relationship with your referral source?
- What types of agreements do you have with your referral sources (formal/informal, MOUs/verbal)?
- Are there any types of cases that you would like to receive but haven't been able to?
- How do you promote yourself to your referral sources, if you do?
- Do you have concerns about being dependent on the criminal justice system for your referrals?
- Are there any systemic barriers to your referral sources referring cases to you?
- Do you think that there are cases that would be suitable for restorative justice but are falling through the cracks?
- Can you tell me about a situation in which you have experienced a clash of vision or values with someone?
- How much flexibility do you have in how you approach each case?
- What are the things that constrain you?
- To whom are you accountable?
- What mechanisms are in place to ensure you are being accountable?

- How do you involve the community in your program?
- Who do you turn to for support and assistance?
- Can you describe your relationship with other service providers in this area?
- What role do the various government ministries (DOJ, MCFD, MSGPS, police, etc.) currently play in relation to your program?
- What role do you think government should play in the field of restorative justice?
- What has the impact of the YCJA been on your work?
- What are your views on standardization through policy, training, or membership in groups?
- What do you think about the DOJ principles?
- Who do you think should be responsible for setting limits for restorative processes?
- Is there anyone else that you think it would be helpful for me to talk to?

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