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THE DEVELOPMENT AND IMPLEMENTATION OF COMMUNITY-BASED JUSTICE PROGRAMS FOR NATIVE AND NORTHERN COMMUNITIES: THE JUSTICE OF THE PEACE PROGRAM IN THE YUKON TERRITORY

by

Linda Mary Frances Weafer

B.A., Simon Fraser University, 1982

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The Development and Implementation of Community-Based Justice Programs for Native and Northern Communities: The Justice of the Peace Program in the Yukon Territory

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ABSTRACT

The growing concern over the effectiveness of the delivery of justice services to native and northern communities has resulted in the increased support for the development and implementation of community-based justice programs. While literature is available on the state of the delivery of justice services to native and northern communities little research is available which examines the development of community-based justice programs.

Any examination of the development and implementation of community-based justice programs requires consideration of a variety of factors, including the definition of "community" and the components of "community-based" justice programs, who the program is to service, who will administer the program, and what the goals and objectives of the program are with respect to the needs of the community.

This thesis is designed to examine the development and implementation of several community-based justice programs in the Yukon Territory. While the primary focus is on the lay Justice of the Peace Program, mediation and diversion programs will be examined for illustrative purposes.

Chapter I reviews several conceptual and practical difficulties involved in the implementation of justice programs which are "community-based". This review begins with a discussion of the term "community".

Chapter II focuses upon some of the problems inherent in the delivery of justice services to northern communities, specifically in terms of the circuit court system. This review sets the stage for the proposal that northern and native communities can, and should, play a more active role in solving their own problems.

Chapter III provides several examples of community-based programs. The examples indicate the advantages and disadvantages of such programs. Examples include community arbitration programs, mediation, community justice councils, diversion, and lay justice of the peace programs.

Chapter IV reviews the present delivery of justice services in the Yukon as well as a review of the mediation and diversion programs.

Chapter V presents the findings of an analysis of the lay justice of the peace program in the Yukon. In Chapter VI it becomes evident that the development of such programs is often problematic and depends to a large degree on community input, participation, and support.

DEDICATION

This thesis is dedicated to my parents. For providing a constant source of love and encouragement,

Ba mhaith liom le go raibh maith agat.

ACKNOWLEDGEMENT

This thesis could not have been completed without the support of a number of individuals.

I wish to thank Dr. Curt Taylor Griffiths, my senior supervisor, who encouraged me to learn more about justice in the north. His advice and guidance was always appreciated. My thanks also go to Dr. Colin Yerbury and Dr. Ray Corrado, my thesis committee members, who both provided me with suggestions, criticisms and support.

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My thanks also go to my friends in the School of Criminology, who have always been a source of encouragement, especially Mary Sutherland.

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understanding throughout my years of study. Their constant support and belief in me helped to complete this thesis.

Finally, to Chris and Tutshi, who made the Yukon Territory that much more special.

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INTRODUCTION

The feasibility of community-based justice programs as a resource for native and northern communities to utilize has to date been a neglected area of study. The growing concern over the delivery of justice services to native and northern communities has not been neglected.

The literature indicates that the delivery of justice services to native and northern communities is problematic. In many northern communities there is an increasing number of native people coming before the courts; there is a general lack of alternative programs and resources for community members and the criminal justice system to use to resolve disputes and specific crime problems; and there is a lack of community input and participation in the development and implementation of justice programs which would attempt to meet the criminal justice needs of the community (Nelms-Matske, 1983; Bill, 1984; Crawford, 1985).

In essence, community-based justice programs promote the direct input and participation of community members in a justice program which is based within the community. To date, however, community-based justice programs in native and northern communities have not developed to their fullest potential. Reasons for this may vary. One could speculate that reasons range from a lack of funding, a lack of leadership and administrative resources in the communities to develop such

programs, a lack of community interest, or the lack of government support. Thus, while research may question its relative effectiveness, the formal court system is still relied upon by many northern communities as the only avenue through which to resolve disputes and crime-related matters. For many native and northern communities, there are no alternative programs or services which allow community members to take on a more active role in the delivery of justice services.

It is the purpose of this thesis to examine the potential for the development and implementation of community-based justice programs for native and northern communities. Issues to be examined include the need for community input and participation; the political and bureaucratic implications involved in terms of the inter-relationship between a community program, the criminal justice system and the government; and the various policy implications which are to be considered in terms of developing such programs.

Upon a review of the various advantages and disadvantages of community-based justice programs for native and northern communities, there is a strong argument to be made for their increased utilization. An analysis of community-based justice programs in the Yukon Territory, specifically the lay justice of the peace program, serves to illustrate the various issues to justify the consideration of such programs as a viable criminal justice resource.

For the purpose of this study, no one particular theory of community justice is advocated; rather, the intention is to present the advantages and disadvantages of community-based justice programs in terms of their potential for development. Thus, this study is descriptive in nature, intending to raise the issues and policy implications which must be considered.

As a case study, the Yukon Territory provided the appropriate setting through which to examine various community-based justice programs in a northern environment. While the focus is upon the lay justice of the peace program, diversion and mediation are also presented for discussion purposes. Due to the cohesiveness of the criminal justice system, the limited number of justice programs operating, the limited number of individuals working within these programs, and the easy access to information, it is relatively easy to become familiar with the operation of the criminal justice system in the Yukon Territory and the various community justice programs that exist.

Data sources for this study included materials from various government and non-government agencies, libraries, the police, native courtworkers and the courts. Interviews were conducted with various criminal justice agents, such as judges, lawyers and probation officers, as well as justices of the peace. In addition, a questionnaire was distributed to all the justices of the peace in the Yukon Territory. Court observations were made of Justice of the Peace Court and on-site visits were made to

nearly every community in the Yukon, including circuit court trips.

Following the introduction, Chapter I examines the conceptual difficulties of such terms as "community" and "community-based" justice programs. The concept "community" encompasses a variety of definitions, many of which are included within the dynamics of community-based justice programs.

Chapter II focuses upon several of the problems inherent in the delivery of justice services to northern and native communities, specifically in relation to the northern court circuit. A review of these problems helps to set the stage for the proposal that northern and native communities should take on a more responsible role in solving their own problem

Chapter III examines several key reasons why northern and native communities should develop their own justice programs. Mediation, community arbitration, justice councils, lay justice of the peace programs and diversion are illustrated. An analysis of such programs indicates the advantages and disadvantages involved in the development and implementation of community justice programs. This analysis provides a foundation for the presentation of research conducted in the Yukon Territory.

Chapter IV discusses the present state of the delivery of justice services in the Yukon Territory, including the northern court circuit, mediation and diversion programs. This chapter raises several issues concerning the level of community

involvement, the need for community input, funding, and the accountability of community-based justice programs to both the criminal justice system and the government. Such issues set the stage for the analysis of the justice of the peace program which is the focus of Chapter V.

Chapter V presents the findings of a study on the lay justice of the peace program in the Yukon Territory. These findings raise important questions in terms of the requirements for a community-based justice progam. An example is whether or not a program can be "community-based" if it is viewed as an extension of the formal court system.

In the final chapter the implications of the findings of this study are discussed in terms of the feasibility of community-based justice programs for native and northern communities. Specifically, this chapter reviews those factors that are important to justify the consideration of community-based justice programs for native and northern communities. Various components of community action, which can contribute to the development of such programs, are discussed.

On the basis of the findings of this study, the point is made that native and northern communities are often an under-utilized resource for the development of justice programs. At the present time, there is a need for community members to take on a more active and responsible role in the delivery of justice services.

The development of justice programs within communities which encourage community input, interest and participation may provide the means to achieve this goal.

CHAPTER I

CRIMINAL JUSTICE AND THE COMMUNITY

Introduction

A complete understanding of the relationship between criminal justice and the community begins with an awareness of the concepts involved. In setting the stage for a discussion on the development and implementation of community-based justice programs, it is important to indicate that the concept of community is far from clear. Furthermore, there are many different definitions and conceptions of it which will play an important role in the implementation of community-based justice structures. For example, a sense of "community" or unity, as well as the presence of "community participation", may both be seen as contributing factors for the successful implementation of programs. Thus, in an attempt to fully understand the relevance of community in terms of the delivery of justice services, it is important to review several definitions of the concept and their applicability in terms of the development of community-based justice programs.

Defining "Community" and "Community Justice Programs"

Sociological definitions of the term "community" have traditionally tended to be structural in nature, such as in a neighborhood as a "social system", a planned settlement to an

entire city. In their analysis of "community", William H. Biddle and Loureide J. Biddle (1965:77) refer to "community" as being, "...what sense of the local common good citizens can be helped to achieve". This perception of community is seen as an achievement, not as a geographical residence. It is not fixed, but changing as a result of purpose or experience. Through experience with what Biddle and Biddle (1965) refer to as an "active nucleus", defined as a small group of serious-minded individuals, citizens who have lost the sense of community begin to discover it as they work together for a common good. This distinction was noted by Jessie Bernard (1973), who distinguished "community" from "the community", emphasizing the common ties and social interaction components of the definition; these are characterized not so much by locale as by moral commitment, social cohesion and personal intimacy. This could also include, "...common ties and social interaction" (Bell and Newby, 1971:29). Here, there is a need for unity and cohesion, that are presumed by Bell and Newby (1971) to be fundamental compondents in a community.

The notion of a community as being "integral" is a common one. Robert MacIver (1917:24), in his sociological analysis of the concept, concludes that, "A community is a focus of social life, the common living of social beings". Furthermore, "A community is a social unity whose members recognize as common a sufficiency of interests to allow for the activities of common life" (MacIver, 1917:107). Through his analysis, community becomes more of an organization of social beings, organized for

the pursuit of some common interest or interests, "...a determinate social unity built upon a common purpose" (MacIver, 1917:23). One would assume, though, that a community may only be unified for particular purposes or interests. For example, the prevention of crime rather than religious beliefs or values. A community may only be a social unity with a sufficiency of interests; it must be clear that not all interests may be shared in terms of religion, values, or even political beliefs. This may be a consideration in the development and implementation of community justice programs in communities where there exists more than one sociocultural group.

Pitirim Sorokin (1962:116), in his work Society, Culture, and Personality, indicates an important discrepancy in MacIver's interpretation.[1] That is, by linking the characteristic of unity or solidarity as a trait of community, this would, "...infer that if solidarity is to be a trait of 'community', any group of people who sustain solidarity relations, no matter where their locale, would be included". One of the most important contributions made by Sorokin (1963) in relation to this discussion of "community", is that as a concept, its meaning fluctuates constantly as authors use diverse conceptions. The examples below will illustrate this point.

In their analysis of the concept of community, Benedict Alper and Lawrence Nichol (1981) cite early sociological definitions including those given by August Comte, Karl Marx, and Ferdinand Toennies. Comte, for example, saw "community" as

meaning love and humanity, incorporating a religion of humanity which could provide a key to the meaning of life itself (Alper and Nichol, 1981). This definition is philosophical in nature, going far beyond a common purpose or social interaction to a religious phenomenon. It is questionable, though, whether this dimension of community is appropriate in the development of community-based justice programs.

Marx, according to Alper and Nichol (1981), saw community as an association which incorporated the theme that the individual's development was a pre-condition for the development of all. Here, "community" has taken on a universal theme.

Toennies, in his distinction between "community" and "society", identified the concept with specific social groups. For Toennies, "community" found its basis in certain structures such as in kinships, friendships, neighborhoods, villages and nations. This did not include class, market, or city (Alper and Nichol, 1981). This notion may be compared to an earlier reference in this chapter by Biddle and Biddle (1965) who suggest that one of the fundamental requirements for community development is the need for human exchange and for unity in various endeavors.

It seems evident that "community development" is seen as functional, initiating a people-directed process that is based upon perceptions of their needs. It recognizes the necessity for the discovery or creation of "a community" in a process that will utilize the existing social structures and will help to

create new organizations and institutions as they are needed by the community. This process may be fundamental to the development and implementation of a justice program that is to be based within the community, directly involving community members as both providers and recipients of a particular service.

The process of a community taking action may encompass a variety of contributing factors (Edwards and Jones, 1976:139). These may include:

1. involvement of the people of the community in an effort to attain common goals;
2. some emotional commitment to the effort on the part of the people involved;
3. enough formalization of goals to assure that their meaning is conveyed to the people involved;
4. use of procedures that were designed for effectiveness and for consistency of those goals;
5. attention paid to people's needs for action; and
6. consideration given to the sociocultural, demographic and ecological features of the community as a whole.

These factors are important to bear in mind and will be discussed further in terms of their relevance to community justice programs in Chapter VI of this thesis.

As a primary analytical concept, "community" is not without its conceptual difficulties. Alper and Nichol (1981:67) outline three orientations to serve as an illustration to understand why

community has become an area of specialization in sociology. The first of these is the "territorial tradition", whereby community life is connected with particular structures and places. This mode is illustrated by village life, which is seen as the epitome of community life. This could be compared to the urban city that Ernest Schusky (1975:21) states is "...notorious for its impersonality".

In the "networking mode" community is a means to interact and communicate. It is a network of relationships, primarily social relationships, and focuses upon how individuals relate to one another. With two or more people interacting, a society exists (Alper and Nichol, 1981).[2]

The third mode refers to a "social bond" (Alper and Nichol, 1981). This mode is the most fundamental sense of community, equated with the basic human urge or need to become involved with other people. Once again, this earlier notion of "human need" is used to illustrate the sense of community and unity. This view would support the notion that there is a need for a sense of community, and a need for trust and fraternal cooperation in a collective entity. Encompassed in this view is the sense of a sharing of responsibility, that, later in this discussion, may be seen as a component of a community-based justice program. Thus, the community may share a responsibility toward a common goal, for example resolving a particular crime problem.

In this sense, community problem-solving is purposeful intervention by people within one organizational context in relation to a specific problem within the community (Spergel, 1969:3).

A major problem arises as to "who" or "what" is the community. Generally speaking, the community may be a specific group of individuals who have decided to voice their concerns about a particular problem, or who undertake to develop a particular program. This group, though, may not necessarily represent the majority of the community members; thus, it becomes very difficult to operationalize the term "community" when only specific groups of the community come forth to voice their concerns and needs. As shall be discussed, this may be apparent in communities of natives and non-natives.

In terms of "what" is the community, a variety of factors or characteristics may be included. For example, Sorokin (1962:243) indicates the relevance of such characteristics as territory, language, religion, occupation or race. Ernest W. Burgess and Roderick D. McKenzie (1967:114), in their discussion of what a community is, cite the importance of a collection of people; a dearly defined area and a collection of institutions such as homes, churches, schools, playgrounds, a community hall, a theatre, businesses and industrial enterprises. Within a larger framework, they cite the relevance of cultural, political and occupational institutions.

Linda Gerber (1977), in her analysis of migration problems on several hundred Canadian Indian reserves, identifies several variables which she has selected as community characteristics.[3] These include, band size, urban proximity, community development, prairie - other location (location within the province, road access, fertility, male-female ratio, personal resources (e.g., employment and education) linguistic acculturation, average earned income and quality of housing. While Gerber primarily focuses upon the influence of these factors on off-reserve residence levels, directly or indirectly, several of these factors such as personal resources and community development which includes the capabilities of a community to be able to develop band councils, school committees or administrative bodies, may be important in terms of the implementation of justice programs and shall be returned to later in the thesis.

The conceptual difficulties encountered are particularly evident when an attempt is made to operationalize the phrase "community-based justice program" and when the community itself is comprised of several different groups each of whom may have specific interests. How does one become aware of what each group within the community would like to see incorporated within a community justice program? Who represents the interests of the community, especially if the community is comprised of both native and non-native members? Will a justice program be based upon non-native values and will it be applied to a native population? Who will initiate, develop, and administer the

program? What are the political and bureaucratic implications involved? Furthermore, what will be the involvement of the formal criminal justice system, if the program is to be based within the community and administered by community members? Who will supervise the program? How will the program be evaluated to see if it is meeting its objectives and who will establish these objectives? What if the community does not have adequate resources to develop and administer a program. Finally, in a cross-cultural community, how is representative input guaranteed for the various groups within the community?

Such questions are difficult to answer. It may very well be that the term "community" is not the most appropriate term to use with respect to "localized" community justice programs. It may be wiser to incorporate the notion of "localized", in the sense of confining or restricting a program to a particular place or group of people, rather than assuming that the whole community should be the recipient of a justice program that is to be based in the community and involves the direct input and participation of community members in its administration and implementation.

For example, neighborhood law classes could be designed for small, closely knit neighborhoods rather than for the community as a whole. Mediation programs could be developed for various groups within the community, such as for juveniles or family matters. Here, the emphasis of a community-based justice program, compared to the formal criminal justice system, is to

incorporate direct community input in the development, implementation, and administration of a justice program, that will be based within the community and directly involve members of the community. In comparison to the formal court system, community-based programs may provide alternative services that may range from dispute resolution services, to the utilization of lay justices of the peace and diversion programs for young offenders. Rather than the formal criminal justice system resolving community problems, community members are directly involved in the dispute resolution processes and solving community problems through community input and participation. Such programs may be less formal in nature, may be less expensive, and the control over the goals and objectives of such programs may lie in the hands of those who are to receive its services.

To employ the term "community" as a catch-all phrase may fail to account for the variances and heterogeneity that may exist within the larger community. In turn, an awareness of the potential sources of conflict that may arise between the various groups must be taken into consideration. It is important also to consider the relationship that a community-based justice program will have with the formal criminal justice system, for example, the courts. In discussions to follow, one of the issues to be addressed in the implementation of community-based lay justice of the peace programs is whether or not these programs are alternatives, or extensions, of the formal criminal justice system which is ultimately accountable to the government.

Furthermore, if it is an extension of the formal court system, encompassed in the politics and bureaucracy of this system, can it still be a community-based program, incorporating community input and participation in its endeavors?

Conclusion

It is evident that the concept "community" incorporates a variety of definitions, many of which are included within the dynamics of community-based justice programs. "Justice by the community", as seen by Alper and Nichol (1981:12) means the following: "...a very localized form of justice, as opposed to the traditional adversary system...". As noted above, just how opposite and non-adversarial a community-based justice program is in comparison to the formal court system is a debatable issue, and one which will be addressed in a later chapter. For example, a lay justice of the peace program may be an alternative to the formal court system in the sense of employing community members as justices of the peace. But, it may also be true that the lay justice of the peace court, itself, may be an extension of the formal criminal justice system by the fact that the justice of the peace could possibly be seen as an agent of the formal criminal justice system. In comparison, a mediation program may be established as an alternative for the resolution of disputes. The objective of such an initiative may be to resolve problems through informal mechanisms of dispute resolution whereby compromise rather than a "win-or-lose" approach is undertaken (Nader, 1978:3).

In an examination of the implementation and development of community-based justice programs consideration of the various conceptual difficulties is necessary. As noted, there are a large number of questions as to what exactly a community-based program is, the various types of programs that may be implemented, and how they should be developed and implemented in terms of the needs of the community. It is obvious from an examination of these conceptual difficulties that in the developing stages of a community justice program there may be a clear mandate as to who the program is to service, who will administer the program, and what the goals and objectives of the program are with respect to the needs of the community as a whole and the various groups that co-exist within the community. This would also include the relationship that the program would have with the formal justice system. There may also be a need for a sense of commitment on the part of those administering the program to make sure that these needs are being met by the program objectives. In this sense, a working relationship must exist; this could possibly be a fundamental entity of a program which is to operate at the community level.

It is the purpose of this thesis to examine the development and implementation of several community-based justice programs in the Yukon Territory. While the primary focus of this examination is on the lay justice of the peace program, additional programs, such as mediation and diversion programs

will be examined for illustrative purposes only in terms of their contribution to the development of community justice programs serving as alternatives to the formal criminal justice system for northern and native communities.

Prior to this examination, this thesis will review some of the problems inherent in the delivery of justice services to northern communities, specifically in terms of the circuit court system and the alienation and frustration which may be experienced by those who encounter the court. A review of some of these problems will help to set the stage for the proposal that northern and native communities can, and should, play a more active role in solving their own problems rather than relying on a court system that only "visits" periodically to conduct court matters. It is on this basis that northern communities provide the appropriate opportunity to examine the feasibility of community-based justice programs. Several examples of such programs will be presented in terms of such feasibility.

NOTES

1. For a more detailed analysis of Sorokin's analysis of community, refer to Sorokin, Pititrim, Society, Culture, and Personality: Their Structure and Dynamics. New York: Cooper Square Publishers, Inc. 1962.

2. For a discussion on the concept of society, see Aberle, D.F. *et al.*, "The Functional Prerequisites of a Society," Ethics vol. LX (1949-50):100. These authors include the following as functional prerequisites of a society; role differentiation, role assignment, communication, shared articulated set of goals, socialization and effective control of disruptive forms of behavior (see article for a complete list). Noticeably absent from this list is the notion of territoriality which is included in several definitions of community. Upon a review of these characteristics one could preclude that a community may be a part of a larger society, sharing similar characteristics. As Aberle, *et al.*, note, various types of social systems can be parts of a society.

3. It is to be noted that Gerber does not include the Yukon or Northwest Territories in her analysis, nor does she draw particular attention to northern communities specifically. Thus, use of her characteristics are for discussion purposes only. Furthermore, her study focuses on native Indian communities while this thesis deals with communities which may also have a large number of non-native residents.

   For further reading, refer to Gerber, Linda. Trends In Out-Migration from Indian Communities Across Canada: A Report to the Task Force on Migrating Native Peoples, Canada Department of the Secretary of State, Ottawa: The Task Force, 1977.

CHAPTER II

JUSTICE IN NATIVE AND NORTHERN COMMUNITIES: THE PROBLEM DEFINED

Introduction

In discussing the delivery of justice services to northern and native communities, there are major considerations to be taken into account in terms of the present state of justice delivery and the various types of programs which could be developed in these communities. Native communities in the northern regions of Canada, the Yukon and Northwest Territories may include Inuit, Metis, the Dene people and natives or other cultural groups. For example, the Yukon Territory has a population of approximately 24,000, one third of which are natives (Yukon Department of Health and Human Resources, 1985). In contrast, the Northwest Territories has a population of approximately 46,000 residents, 22% of whom are Dene, 35% Inuit, and the remainder are non-native and non-status Indians (as cited in Griffiths, 1985). It is also important to indicate that the legal definition of the term "Indian" may tend to exclude a large number of native people. It is the Indian Act of Canada that defines an "Indian" as an individual who is registered as an Indian. It is obvious that this would exclude those natives not registered, as well as Inuit and Metis. Thus, one must use caution when using the term "Indian" and the literature which may only focus on registered Indians.

Consideration must be given to the use of the term "northern". It is often used to encompass Canadian communities north of the 50th parallel, that would include the northern regions of the provinces, the Yukon, and the Northwest Territories. This, in itself, creates problems due to the diversities between these jurisdictions. For example, with the exception of Old Crow, all communities in the Yukon Territory are accessible by road; this is compared to the fact that all the communities in the Northwest Territories, except for the Great Slave Lake region, are inaccessible by road (as cited in Griffiths, 1985). Furthermore, in terms of language, the predominant language used in the Yukon Territory by both native and non-native populations is English, whereas in the Northwest Territory where the majority of residents are native, native languages are spoken (as cited in Griffiths, 1985).

For the purpose of this thesis, there will be no differentiation between registered and non-registered natives who live in northern communities. As stated, many communities in the northern regions of the provinces, the Yukon and the Northwest Territories may have resident Metis, Inuit and native people. The concern here is directed towards the development of community-based justice programs in those communities that would directly involve community members and incorporate community needs, including native, Inuit, and non-native concerns.

With reference to the term "northern", this will generally refer to those communities beyond the 50th parallel,

predominantly in the northern regions of the provinces, the Yukon and Northwest Territories. In terms of program examples, the region will be specified. As noted above, there are vast differences between these regions and differences within the communities of each region, and this may affect the type of program which may operate in the community. For example, in discussing the lay justice of the peace program in the Yukon, there are differences between a community such as Watson Lake and a community such as Whitehorse in terms of population and association with the formal justice system and government which are based in Whitehorse. What is important to be kept in mind is that this thesis is concerned with the development and implementation of community-based justice programs that encompass community participation. Northern communities may provide a good opportunity to explore the potential for such programs.

Prior to a discussion of the need for community justice programs and community participation in such programs, it is important to review some of the difficulties encountered by several northern communities, specifically in the Northwest Territories, northern British Columbia, and Alaska, in terms of the delivery of justice services. Alaskan examples were chosen because of the similar types of problems, which many Alaskan communities experience in terms of justice delivery. This will begin with a discussion of the northern court circuit. Once again, a cautionary note is to be taken with respect to the variations that exist among northern communities, especially

between the Yukon and Northwest Territories. For example, there may be cultural, linguistic, economic, political, racial and isolation factors distinguishing communities from one another. Some communities may have the resources, whether they be administrative, leadership or financial to be able to develop and implement their own justice programs while others may not. As Gerber (1977:8) indicates, the community development is very important in relation to a community meeting its own needs. This is an important point and will be returned to with respect to the implementation of community-based justice programs.

In the section to follow the northern court circuit will be discussed. As a forum of justice it is somewhat unique in its style of justice and will serve to illustrate several key problems found in the delivery of justice services to many northern and native communities.

The Northern Court Circuit

The circuit court, as it is termed, is a style of justice delivery that is quite different to the style of justice delivery found in southern, urban regions of Canada. Basically, the circuit court, which is utilized in many northern regions of the provinces, the Yukon and Northwest Territories, consists of a judge, lawyers, police, and court staff, travelling to communities within a specific jurisdiction and holding court within that jurisdiction usually dealing with criminal matters. For example, in the Yukon Territory, fourteen communities are

serviced by two Territorial Court Judges who travel with the court party to the various communities, usually three or four times yearly (Bill, 1984). The circuits vary in length from one day to two weeks with the average circuit court visit being one week (Bill, 1984). This will depend primarily on the number of court cases to be dealt with and the events in the community (as cited in Griffiths, 1985). In the case of Old Crow, which is the only community in the Yukon not accessible by road, the circuit court is scheduled when most individuals are present in the community and not hunting, fishing, or trapping outside the community, which is a seasonal lifestyle for many of the native people of Old Crow (as cited in Griffiths, 1985). As Roger Kimmerly (1981:39) notes of the circuit court trips to Old Crow when he was a magistrate, "Attendance includes most of the population - the court is a focal point for local issues - the individual dramas unfold with widespread community interest and great concentration". This would suggest that the community is interested and involved in the visits that the court makes to their community.

In comparison to the circuit court in the Yukon, in the Northwest Territories approximately 40 to 50 communities are visited by both the Territorial and Supreme Court judges who travel on six circuits (as cited in Griffiths, 1985). Unlike the Yukon Territory where the legal services are based in Whitehorse, the capital and government centre of the Yukon, in the Northwest Territories there are lawyers in several communities outside of the capital, Yellowknife (as cited in

Griffiths, 1985). The circuit court may visit the larger communities in the Northwest Territories every month, while other communities are visited every three months (Griffiths, 1985). It is important to note that unlike the Yukon where English is spoken by the majority of native people who reside in the Yukon, the majority of native residents in the Northwest Territories speak only their native language thus requiring extensive use of interpreters in court. As cited in Griffiths (1985:1-5): "There are often considerable language difficulties between English-speaking members of the court party and people in the villages".

Observations made concerning the circuit court have cited the practices of the first Superior Court Judge of the Northwest Territories, Mr. Justice Sissons, as those who reflect its true spirit. It was the wish of Mr. Justice Sissons (1968:66) that every effort be made to ensure that justice was taken to every man's door in the Northwest Territories. A successor of Judge Sissons, Mr. Justice C.F. Tallis (1979:77) agrees with this sentiment, advocating that, "...the courts must be vigilant and conscientious in order to ensure that native people, whether Inuit or Indian, are treated fairly when they are brought before the Court". By taking the court to each community in the Northwest Territories, it was hoped that the people would be able to see justice being administered. As stated by W.G. Morrow (1981:265):

> This helps in the educational process. And as well, it should solve some of the mystery ordinarily associated with trials. The people can see and hear for themselves, and if it is a jury trial, they can actually take part.

art.

There are several reasons to suggest why community members should take on a more responsible role in the delivery of justice services. Anne Crawford (1985) examined many of the difficulties surrounding the delivery of justice services by the circuit court in the Northwest Territories. For example, she discusses the role of the courts in instances where values of particular native and Inuit communites in the Northwest Territories are sufficiently different to the point that this may cause conflict between the community practices and what is seen as an "enforced standard of law" (Crawford 1985:1). She gives the following example to illustrate this sense of bewilderment:

> During a court break, an elder from a remote community sat in the corner of the courthouse. Again and again the law was explained to him. Finally the interpreter indicated that there was no need to continue. 'Don't worry', said the interpreter; 'You don't need to explain it again. He understands what you are telling him. He just looks confused because he wonders how his community will be able to live with a law like that'.

To illustrate her argument, Crawford (1985) draws examples from circuit court practices in the Northwest Territories as a result of her role as a defence counsel. For example, with respect to using native people as jury members, she notes that there are often linguistic and communication difficulties that make it difficult for a native person to sit on a jury panel when the proceedings are in English. The result is that non-natives are over-represented on most jury panels in the Northwest Territories (Crawford, 1985). Thus, if an accused is

native it is difficult to assume that he/she is being judged by their peers.

On the basis of her experience as a defence lawyer in the Northwest Territories, Crawford (1985) suggests that the criminal law is perceived in a number of ways. Depending perhaps on the particular community, the presence of the police and the various functions the police perform, for example the crime prevention work, was acceptable. However, many of the communities that Crawford had contact with found the justice system, "...slow, ponderous and pursues trivialities" (Crawford, 1985:19). A major problem was the length of time it took for certain matters to be resolved. An example is the lag time between the offence commission and the arrival of the circuit court to deal with the matter. Community members, in Crawford's (1985) view, want to resolve matters quickly so that they can get back to their normal lives. They do not want to wait months for the circuit court to arrive; they want the matter dealt with quickly so that it does not interfere with their family life. Clem Chartier (1981) notes that because of this and the fact that the legal system is so complex, some native people may plead guilty out of frustration to get the matter dealt with. Furthermore, Robert Francis (1973:9) states: "Court is not part of the scenery. It comes in and dispenses white man's justice and that's the end of it".

Joyce Nelms-Matzke (1983), in her review of the delivery of justice services to isolated northern regions in British

Columbia, found similar problems with the circuit court that visited the four villages which she studied, every two or three months.[2] What is important to note from her findings is that in spite of the circuit court eventually arriving in the community to deal with court matters, from the time of the occurrence of the offence and the actual court date, social sanctions in the village had already been put in motion (Nelms-Matzke, 1983). On the basis of her observations of the circuit court in northern British Columbia, Jocelyn Marshall (1982) concluded that by the time the circuit court arrived and the evidence was brought to court, the parties involved may have already settled their differences and may not appear together, if at all. By the time the court arrived, the victim and offender may have resolved the matter and come to terms with respect to restitution. In this manner, the individuals themselves had taken the initiative to solve their own problem rather than waiting for the circuit court to arrive to resolve it for them. The matter was dealt with quickly and there was little interference in the lives of those directly involved in the matter. Furthermore, there may have been a better understanding of the procedures if the matter was dealt with through a community dispute resolution mechanism.

Nelms-Matzke (1983) noted several important requirements that were necessary to improve the delivery of justice services to the northern communities of British Columbia. These included, speed, involvement of the community in the process, and the guarantee that the offender as well as the victim, were ensured of protection.

The role of the community in the criminal justice process has been a constant source of inquiry by various researchers. Crawford (1985) cites various cases where communities in the Northwest Territories have a say in the sentencing of the accused. There are communities that have given substantial support to the accused when community members felt that they could adequately deal with the accused's criminal behavior. For example, in those cases where the accused could not afford to pay a fine "...there have been orders to supply so many pounds of fresh meat; to haul water; or to chop wood" (Crawford, 1985:9). This could indicate a desire on the part of community members to become more directly involved in solving problems within the community, by attempting to utilize community-based resolutions to such problems.

Using the community as an avenue to resolve certain crime and justice problems within the community has received increased attention in recent years. Joseph Bovard (1985) stresses that in certain communities in the Northwest Territories where he has had experience as a defence lawyer, there is a need for the communities to be able to actively participate in the criminal justice process with respect to less serious crimes.[3] John Angell (1981:30), in his study of public safety and the justice system in Alaskan native villages, found that, "...the concepts, limitations and appopriate uses of Anglo-American law is not adequately understood in native communities". Thus, those village officials with whom Angell spoke stated that they would prefer to see laws imposed that were more relevant and better administered to the needs of the village members.

Some villages which Angell (1981) studied did, in fact, have such laws. In these villages, "bush justice", which was defined as a general area encompassing the nature and methods of social control and public safety in predominantly native villages, had become an intricate part of the criminal justice system in Alaska (Angell, 1981). In these Alaskan native villages the members of the villages disposed of many cases involving minor deviancy.

Angell (1981:15) found that the normal practice of handling unacceptable behavior in the villages involved a village council accepting referrals from the village police officer and rendering decisions concerning the disposition chosen for the accused. If the matter involves widespread concern, the village council may call a general meeting and a concensus is reached about the course of action, be it community work, or some other penalty. If a consensus was not reached, the matter was referred to the State Troopers to be dealt with (Angell, 1981).[4]

A similar response to minor deviance was found by Kimmerly (1980:17) in his experience as a Magistrate in the Yukon Territory. He gives the following example of a case in Old Crow:

> A number of means have been attempted to deal with the liquor problem one being sentences of 'banishment' given through a probation order in which the offenders were required to trap outside of the Old Crow townsite. Such an order is issued after discussion with the Chief and the band council and is agreed by both the defense and the Crown Counsel.

In terms of the relationship that many native and Inuit communities have with the circuit court system, especially in the Northwest Territories, there is a need for the development of resources and support services for both the justice system and community to use. Services which are adative to community needs. As noted by Bovard (1985), there may be a general lack of understanding of the law in many communities in the Northwest Territories thus the need for legal education.[5]

Brad Morse (1976) notes that our legal system rests on the assumption that we all understand or should understand the law. This assumption, though, is not justifiable without taking into consideration the various cultural and value systems that may be present in a large number of communities in regions such as the Northwest Territories where the majority of the population is native or Inuit. Even in the Yukon Territory, where the population of native people may not be as large, or proportionate to the number of non-natives, there is present, a lack of understanding of the court procedures by many of the native people in the Yukon (Bill, 1984). This should be of concern since, as Bill (1984) notes, the majority of people appearing before the courts in the Yukon are native.

The need to incorporate community values, and cultural variations in terms of responding to problems within the community has become apparent to many researchers (McCaskill, 1981; Morse, 1983; Crawford, 1985). This is especially true where the majority of individuals coming before the courts in

many communities are native people who do not understand court procedures (Crawford, 1985; Bill, 1984). As Bill (1984) notes, there is a need to bring native people into the justice system in the Yukon in terms of assisting the defendants who have little or no comprehension of what is going on before them.

Innovative methods need to be developed that would allow for the active participation of community members in the resolution of community problems. As such, these programs could be administered at the community level, by community members, and incorporate the needs of the native offenders and the community as a whole (Caves, 1981). In this sense, the community could take on a more active responsibility for its own problems and the caseload the circuit court encounters when it visits the communities might possibly be reduced.

Conclusion

This chapter has examined the present state of justice delivery to native and northern communities. This chapter has emphasized the point that there is a need for innovative methods to be developed which incorporate the needs of community members and encourage the development of justice structures which rely on community responsibility. Such responsibility would entail community members having the resources available to be able to resolve crime-related matters. As noted, such programs would also assist the formal court system by providing alternatives and support services.

The purpose of the following chapter is to examine several reasons why communities should become more active in the delivery of justice services. In addition, several examples of community-based justice programs will be presented to illustrate the various advantages and disadvantages of such programs and their feasibility for native and northern communities. Taking into account the variations that exist between jurisdictions, it will be suggested that the northern communities would appear to provide a good opportunity to explore the potential of community-based justice programs. This thesis will thus examine, in greater detail, the various community-based justice programs operating in the Yukon Territory.

NOTES

1. Joe Bovard, a defence lawyer in Frobisher Bay, Northwest Territories, stated that there were instances in his experience when, due to a lack of understanding of the law and the justice system, some of his Inuit clients would give their statement freely to the police without their lawyer being present. Lecture, Simon Fraser University, 28 February, 1985.

2. Nelms-Matzke (1983), in her analysis of the delivery of justice services to northern communities in British Columbia, found that at least 95% of all cases dealt with by the courts involved native people.

3. Lecture given by Joe Bovard, Simon Fraser University, Burnaby, B.C., 28 February, 1985.

4. The Alaskan State Troopers visit the villages on an average of once a month. Angell (1981) cites that three-quarters of the communities surveyed had their own local officer. The average visits by the State Attorney is one each year for those communities not near a commercial city.

5. Lecture given by Joe Bovard, Simon Fraser University, Burnaby, B.C., 28 February, 1985.

CHAPTER III

THE NEED TO DEVELOP COMMUNITY-BASED JUSTICE PROGRAMS: PROGRAM EXAMPLES

Introduction

Several key reasons for the development of community-based justice programs and the need for community involvement in such programs will be examined in this chapter. For the most part, this examination will entail the analysis of several types of community justice programs such as mediation, community arbitration programs, justice councils, lay justice of the peace programs, and a juvenile diversion program. An analysis of these community justice programs will illustrate both the advantages and disadvantages involved in the development and implementation of community justice programs and will provide additional foundation for the presentation of research conducted in the Yukon Territory.

On the basis of the previous discussion, there seem to be several major justifications for at least considering community-based justice programs. These include, the factors related to speed, cost effectiveness, community-problem solving, the difficulties associated with the current system of justice, especially in northern regions of Canada - the Northwest Territories and the Yukon, the difficulties associated with native involvement in the criminal justice system, and the opportunity that northern communities appear for the

implementation of what could be seen as alternatives to the present justice service delivery.

The Canadian Criminology and Corrections Association, a national organization of individuals working and interested in criminology and corrections in Canada (C.C.C.A., 1976) has also provided several recommendations for the development of community justice programs, which encourage community involvement. The first recommendation of prime importance is the prevention of crime. This would include encouraging the communities to play a larger role in crime prevention measures in their jurisdiction.

The second recommendation includes the use of community diversion programs to screen minors or first offenders out of the criminal justice system into community-based services (Canadian Criminology and Corrections Association, 1976).

The final recommendation put forth by the C.C.C.A. included the use of lay assessors in the sentencing process, especially with respect to charges against native people. They note the history of the private sector involvement in the criminal justice system (C.C.C.A., 1976:6):

> In primitive societies, anti-social behavior was dealt with by the citizens themselves. Justice was dispenced by peers based upon common values and standards of behavior. The community was involved in the criminal justice process and restitution was used frequently in dealing with disputes between offenders?.

In his analysis of "community", Erikson (1975), a sociologist, outlines what he terms a "functional" approach to a

community's reaction to crime and deviance. This approach indicates several reasons why communities should become involved in the development of localized justice programs, including the possibility that the reaction of the community to deviant behavior may have an effect on the behavior of the individual.

Erikson (1975) notes that the community's decision to bring deviant sanctions against one of its members is not a simple act of censure, rather it is an intricate "rite of transition". The individual moves out of his/her ordinary place in the community and is transformed into a deviant role. This transition is comprised of a type of ceremony that will change the status of the individual. The ceremony itself will take place in a formal setting such as a courtroom with a criminal trial. An announcement is made as to the nature of the deviance, and a possible verdict, and the individual is given a certain punishment for his/her behavior.

Such "ceremonies", according to Erikson (1975), include widespread public interest of the event, taking place in a dramatic setting such as the criminal trial. There is much formality and exaggeration of rituals involved in the procedures whereby the individual is judged whether or not he/she is legitimately deviant (Erikson, 1975: 27-28).

This analogy suggests an interesting role for community justice programs. Having the community become involved in the justice process could alleviate many of the formalities encountered by the criminal justice process and the confusion

and alienation individuals may feel when they encounter this system.

The contemporary examples of community justice programs are to be found in a variety of sources. These include community arbitration boards, mediation programs, justice councils, diversion programs and lay justice of the peace programs. The focus of the discussion to follow will be to examine several of these initiatives in terms of their goals and objectives, including their viability as community justice programs. This, in turn, will provide examples of programs that may be viable for communities in northern regions such as the Yukon.

Community Arbitration Programs

A good example of a program that strives to achieve the above noted goals is suggested by Mund (1976:109). The community arbitration board, which is also similar to community boards or neighborhood justice centres found in many areas of the United States (Schonholtz, 1984), are tailored to meet the needs of the community it serves. Through careful planning and community support, interested leadership and the support of justice personnel, a community arbitration board may be uncluttered by formal rules and procedures of the courtroom, and may be based upon and reflect community standards. Compromises may be reached with which all parties involved could be satisfied (Mund, 1976: 109-110).

The role of the community arbitration board is similar to the mediation process that involves two parties meeting with a mediator to resolve a dispute. The mediation process involved is one which is reflected by an informal meeting with minimal procedural jargon to comprehend, whereby the parties involved are directly involved in the resolution of the dispute. A compromise may be reached via their direct participation in the process, each participant contributing what they feel is just for the resolution of the dispute.

The procedures involved in this process are not conducted in court, rather they are held in an informal meeting where strict rules of evidence do not apply (Mund, 1976). The arbitrator resolves the case after all the parties present have been given an opportunity to express themselves on issues that they feel are relevant. For example, if the purpose of the community arbitration program is to deal with young offenders who have been diverted to the program from the formal courts, the arbitrator will resolve the case after all parties involved have been given an opportunity to express themselves on issues of whether the child has violated the law, and if so, to suggest appropriate sanctions.

Similar to a community arbitration program, a community board provides a conflict resolution program to community members (Schonholtz, 1984:54). Individuals learn how to resolve their own disputes and are provided with a service that is applicable to their needs. Parties are able to meet with a panel

of community members who will listen to the details of the issues of the dispute and will provide the opportunity for the parties to become directly involved in resolving their own dispute by promoting discussion and communication among all of them.

Mund (1976:111) concludes that programs such as community arbitration programs are advantageous for several reasons, including the reduction of cost in resolving a dispute that does not require a lawyer, reducing the length of time it takes to resolve a dispute, maintaining privacy in the sense that matters can be dealt with in confidence; and the advantage of directly involving the disputants in the process of resolving their own matters. There is no need for the unfamiliarity and frustration which many individuals encounter when they have contact with the formal criminal justice system. As noted earlier, many native and Inuit people face frustrations when encountering the circuit court, such as language difficulties (Francis, 1973). It is quite feasible for community arbitration programs to be conducted by community members who speak the native language of the community and thus alleviate the problem of misinterpretation or lack of understanding of the procedures.

Mediation

Mediation has been defined as:

> ...an approach to conflict resolution in which an impartial third party intervenes in a dispute with the consent of the parties, to assist them in reaching a

> mutually satisfactory settlement to issues in dispute (Burkhardt, 1984:5).

It is not a mandatory approach, rather it is a voluntary one. Disputants may choose mediation as an alternative and mediators facilitate the encounter but do not force their own opinions, or solutions, on the dispute. As Peachey, Snyder and Teichroeb (1983:1.6) state in "A Training Guide for Mediators in the Criminal Justice System":

> Mediation, negotiation, and bargaining are not new phenomena in the legal system. Despite its adversary stereotype, the legal system has depended on such tools for a long time as a practical necessity. Mediation programs that have developed in recent years represent attempts to legitimize and expand the role of mediation and bargaining in handling conflicts.

Mediation programs are no longer new in Canada (Burkhardt, 1984; Peachey, Snyder and Teichroeb, 1983). Such programs share a common understanding of mediation as a third party working with the parties in conflict, but the programs may differ in terms of how they operate (Burkhardt, 1984). Some attempt to deal with community problems such as neighborhood disputes, property disputes, landlord-tenant disagreements, vandalism, breaking and entering and petty theft (Burkhardt, 1984). Other programs work at family disputes, including separation and custody matters. As will be discussed further in this thesis, mediation programs in the Yukon have recently been developed to deal with small claims and family dispute matters.

Mediation can offer an alternative to laying charges, bringing an offender before the courts, or incarcerating someone found guilty of an offence.

As Peachey, Snyder and Teichroeb (1983:1.8) state, "Mediation is a viable method of dispute settlement at both pre-trial and post-trial levels". Mediation can also provide the opportunity for victims and offenders to meet face-to-face. Mediation skills are utilized to encourage communication among the parties so that they are able to resolve their own dispute rather than having lawyers or judges precide over the matter. Community members are encouraged to actively participate in resolving their own disputes at a cost that is minimal in terms of finances and time (Burkhardt, 1984). Such an alternative is feasible for northern and native communities perhaps in the form of a council of community elders who would be available to mediate disputes between community members.

Community Justice Councils

Community justice councils have been defined as "regional councils", whose task would be to provide:

> ...an ideal opportunity for citizens input through their participation in the prevention and control of crimes and delinquency either by advisory committees or participation in special projects (Lajuenesse, 1976).

In the mid-1970's community justice councils were established in British Columbia. A review of their development and implementation will highlight several key issues involved in the objective of increasing community participation in justice programs.

Lajuenesse (1976) notes that there are six key principles inherent to the development and implementation of community justice councils. They include, citizen participation; decentralization, communication, coordination, cross-systems planning,and innovation.

Citizen participation in the context of justice councils, as defined by Lajuenesse (1976:8) was seen as, "...citizen involvement or the direct participation of the individual citizen in the process of the government, in this instance, the justice system".

This task though, may be easier said than done. The amount of government control over operation of a program may or may not be hazardous to the program's operation. Such control could lead to the alientation of the community in terms of its input into the program.

Decentralization included the dispersion or distribution of powers and functions from a central authority to local and regional authorities (Lajeunesse, 1976). This was designed to enable people and organizations to participate.

Communication and coordination enabled the justice councils to bring together people of various interest groups to become involved in the administration of justice. This facilitated a better working relationship for such groups and their activities at the local level (Lajeunesse, 1976). This, in turn, was the key for cross-systems planning, allowing citizens to participate in the planning of innovative programs.

Various issues surround the development of justice councils. Lajuenesse (1976) noted the requirement for the establishment of a solid administrative base to organize meetings. These include the need for justice councils to be issue-oriented and sensitive to the political conflicts with other social and justice groups within the community, and the need that they must not be too bureaucractic or political in nature for fear of alienating community members who did not understand their purpose or procedures.

Justice councils in British Columbia did not survive (Lajuensse, 1976). It is imperative here to speculate as to why this might have happened. The first of which may be found in the relationship between the community members and the justice councils. A justice council could only survive if there was community interest in terms of administrating and participating in the program. If this interest is not present, operational and administrative difficulties occur in terms of making sure that the program is active and providing the required services. Furthermore, in attempting to identify community issues and needs, it is obvious that there will be conflicts of interest between the various groups within the community. What one group may see as a "special project", another group may not. In terms of implementing such projects, it is necessary to determine who will decide which project has priority.

In terms of the bureaucratic and political nature of a community justice council, the point has been made that such a program may become too bureaucratic and political and thus alienate itself from the community. In this sense, a justice council may become an extension of the formal criminal justice system, rather than a community-based justice program which is presumed to be one of its primary objectives.

In addition, Lajeunesse (1976:56-80) implies that justice councils were operating without policy and were in need of more communication and support from politicians and the government. Without such support and a clear mandate, it would seem that the demise of such programs was inevitable.

Finally, the question of testing the effectiveness of such programs needs to be addressed in terms of one of its primary objectives, that of increasing community involvement in problem-solving. If a justice council is not effective in resolving one of the community's problems, one has to ask whether this necessarily means that it is an effective program, and what criteria will be used to evaluate the program. Furthermore, using the same line of questioning if a justice council does resolve a particular community problem but with little community input in doing so, is this program still a "community" justice council? One would assume that community interest would be vital for the development and implementation of any of the projects that a justice council would undertake. Without such community interest, the program seems to be failing

one of its fundamental objectives, bringing together: "...people of various interests and groups to become involved in the administration of justice" (Lajuenesse, 1976:9).

Diversion

Diversion is a highly controversial issue with regards to its definition and policy (Ekstedt and Griffiths, 1984:330-333)). For the purposes of this discussion, Alper and Nichol's (1981) definition of diversion will be used to illustrate the point that diversion serves as an alternative to imprisonment and may involve community participation in its operation.

Alper and Nichol (1981:39) propose one definition of diversion:

> ...the practice by criminal justice officials - police, prosecutors, and judges - of channeling out of the criminal process offenders who, as a consequence of their probable and assumed guilt, would normally be handled by the criminal process.

Some programs focus on young offenders, others adults, usually dealing with less serious crimes or first offenders (Alper and Nichol, 1981). Diversion programs, in essence, provide alternatives for offenders to be responsible for their actions by providing alternative measures to imprisonment, for example, some community work, intensive counselling, job placement, or educational services. If the offender has successfully completed the program prescribed, the charges against him/her may be dropped (Alper and Nichol, 1981).

Community involvement in such a program may or may not be a pre-requisite to the program's development and implementation. As noted above, Alper and Nichol (1981) advocate that formal agents of the criminal justice system have direct input into the operation of the program. This may or may not be advantageous, depending upon the amount of control the formal justice system may have over a program. There may be little room for community input if an offender is not diverted right out of the formal justice system. This, however, may not always be the case. A fundamental objective of a diversion program, as suggested by the Native Counselling Services of Alberta (N.C.S.A.), may be to increase the involvement of the community and enable the community to have direct input into the operation of the program (N.C.S.A., 1982).

As an example, the High Level Diversion Program will be discussed below to illustrate some of the more general problems that may occur when a community wishes to play an active role in the operation of a justice program. This example will also illustrate how a program that is supposed to deflect people away from the criminal justice system may become an extension of that system.

The High Level Diversion Program operated for three years, 1977 to 1980, in the High Level area of northwestern Alberta (N.C.S.A., 1982). It serviced small towns, two Indian reserves, and one Metis settlement. The objectives of the project included the following:

1. to provide an alternative to imprisonment for minor offences or fine default;
2. to keep minor offenders out of the formal court system and justice procedures;
3. to avoid the stigma of a criminal record, and which was likely one of the most important objectives; and
4. to involve members of the communities extensively through their participation on a potential Diversion Screening Committee (N.C.S.A., 1982). This Committee would meet with the victim and the offender and discuss a suitable agreement whereby the offender could compensate for the offence (N.C.S.A., 1982).

In this diversion process, the agreements were designed to be flexible, with the emphasis on the resolution of the problem to everyone's satisfaction. Resolution was to be accomplished through a verbal apology, cash restitution to the victim, or community work service (N.C.S.A., 1982). Those offences to be diverted included causing a disturbance, common assault, theft under $200, and breaking and entering (N.C.S.A., 1982).

On the basis of an assessment conducted by the Native Counselling Services of Alberta (1982), it became apparent that the objectives of the program could not be achieved with respect to the offences, the client group, the diversion agreements, or the method of referral to the program, even though these objectives had been approved by the communities involved in the project. For example, it was intended that the Diversion

Committee was to have a strong voice in the diversion decisions; the final decision, though, was made by the Crown Prosecutor. While the R.C.M.P. were involved initially in the screening of offenders for possible referral, it soon withdrew from the screening process altogether. The N.C.S.A. (1982:325) states that this was, "Partly in an attempt to avoid criticism for non-referral of potential clients and partly to render the referral process uniform for all three detachments in the area". Thus, the R.C.M.P. only stamped the front of the files that were to be diverted.

These files, then, went into the court docket and the diversion was made in court, whereupon the offender was summoned to court to receive the decision as to whether or not he/she was to be diverted. It was through this method that the diversion process essentially became a formal part of court proceedings. When the R.C.M.P. withdrew from the selection process, this resulted in less communication between the R.C.M.P. and the Diversion Coordinator in the communities, and "...a significant reduction in the role, real or perceived, of the diversion committee" (N.C.S.A., 1982:325).

During the three years that the program operated, there were 72 referrals (N.C.S.A., 1982). Of these, 11 clients had been rejected by the Crown Attorney for participation in the project, and four were referred back to the police, or Crown. There were 57 clients who participated in the program and successfully completed their agreements. Of these, 39 were known to have not re-offended (N.C.S.A., 1982).

While the program ceased to operate in 1980, the Native Counselling Services of Alberta (1982) did not view the project as a complete failure. The support given to the project by the communities had been maintained throughout the duration of the program. The project had demonstrated, according to the N.C.S.A. (1982), that community members were willing, and could take part in the decision-making about what to do with offenders in the community. This in itself was an achievement. Despite this, the project was plagued by a low referral rate from the police and Crown's office, which undoubtedly affected the decision not to extend funding of the program past the demonstration stage.

The N.C.S.A. (1982) concluded that while the High Level Diversion Program was designed to be flexible, innovative, and educational, and involved community input, the project became, for various reasons, an extension of the formal court system. As the N.C.S.A.(1982:328) concludes,

> The program might have appeared unorthodox, but the pressure to conform to the more formal system essentially rendered it part of that system, and unable to respond to the community's needs and expectations as Native Counselling Services would have wished.

In terms of lessons to be learned with respect to the development and implementation of what was hoped to be a community-based justice program, the High Level Diversion Program is a suitable illustration. Throughout the duration of this program it seems obvious that there was lack of communication between community members and the formal court

system and its agents. This program also illustrates how problematic the object of diverting young offenders from the formal court system can be. In terms of the High Level Diversion Program the youths who were referred from the courts never actually left the formal criminal system. With the final decision of referral being made by the Crown this program became an extension of the court system rather than a diversionary mechanism. In essence, this diversion program was an alternative within the formal justice system, becoming caught up in bureaucracy.

This program also illustrates how the community can lose any decision-making powers that they may have in terms of the actual implementation and operation of a program. Trying to maintain a balance between the interests of the community and the interests of the formal court system can be problematic, as the High Level Diversion Program illustrated. Such interests and roles clearly should be defined prior to the inception and development of a program. As the N.C.S.A. (1982:328) so aptly states, "...if community participation is to be encouraged, then it must be community participation in a real sense, not on a tight leash."

Lay Justice of the Peace Programs

While justice of the peace programs exist in all regions of Canada, the following discussion will focus on the development and implementation of several lay justice of the peace programs that have developed in various regions, including the Northwest

Territories, Ontario, and Saskatchewan. While these regions may vary geographically, culturally, linguistically and politically, these programs have been selected because they not only illlustrate initiatives that have been developed for northern communities, but also because they highlight both the advantages and disadvantages of this particular type of program. For example, one of the key issues to be examined in terms of the development of community-based justice programs, is whether or not the program is an adjunct to the existing formal justice system which allows for community involvement, or whether it is actually an alternative to the adversarial system of justice. It may be that such an initiative, designed to improve the delivery of justice services, may not mean that the program should be an alternative to the formal system but merely means it uses some element of the 'formal' system, to operate on the local level. This is an important distinction to make, and one which will be addressed, both in the discussion to follow and in the examination of the lay justice of the peace program in the Yukon Territory.

Essentially, lay justice of the peace programs have developed in various northern regions such as those mentioned above to make the delivery of justice services more accessible to community members while incorporating community participation and input as justices of the peace. By having more local people, including native and Inuit people, function as Justices of the Peace there is the potential for increased respect and credibility of the system. For example, Justices of the Peace

are able to address charges and procedures of the court in the language which the people understand especially if English is a second language. By having the sensitivity and understanding of local conditions, the Justice of the Peace may be able to impose a sentence that the victim may feel is just. The penalty could fit both the needs of the offender and the community. For example, the offender may not be sent to a prison, but rather she/he be able to stay close to his/her family. As Anthony Whitford (1984:7) observes regarding the use of local people in the justice of the peace program in communities in the Northwest Territories,

> A Justice of the Peace, because of his or her participation in the community can often be more knowledgeable of the circumstances under which an offence was committed and be somewhat more versatile in sentencing.

Native involvement in justice of the peace programs is very important. This is in part due to the fact that for many northern communities, such as the Northwest Territories, the population is largely Dene and Inuit people. The point, too, that has been made earlier is that in many northern communities, there is a large number of native people who are coming before the courts. Thus, the recommendation has been made to increase the involvement of native people as justices of the peace. As the Ontario Native Council on Justice (1982:127) recommended in its review of the justice of the peace program in that Province, native Justices of the Peace would have a better understanding of native culture and the problems inherent in native communities, "...which would result in more appropriate

sentencing." It was felt by the Ontario Native Council on Justice (1982) that native Justices of the Peace were more likely to be accepted by the native offender and the community at large. Thus, recruiting natives to become justices of the peace became a main priority for the Ontario Native Council on Justice (1982). This is also an important goal of the justice of the peace program in the Northwest Territories (Whitford, 1984) and the Yukon Territory.

In terms of their jurisdiction and powers, this may vary with the particular jurisdiction. For the most part, justices of the peace may deal with less serious criminal matters, such as summary conviction charges and municipal matters which would include, local by-laws, band council by-laws, warrants, show cause hearings and informations, bail hearings, and trials for guilty pleas. Examples of the types of offences that they would deal with could include, motor vehicle offences, liquor ordinances, less serious property offences, and assaults. This, of course, may depend on the particular region.

Recruitment for justices of the peace is usually done at the community level. Suitable candidates are selected, or recommended, by community members, the R.C.M.P., other justices of the peace, or, criminal justice agents in the community, such as probation officers, or native courtworkers. Training for the most part is on-the-job, although usually conferences, workshops and supervision by a senior justice of the peace are important components of the training program. This also may depend on the particular jurisdiction.

Recruitment, training, remuneration, supervision and authority are all key issues to focus on when examining various justice of the peace programs in northern regions. The following discussion will focus on these issues through an examination of the justice of the peace programs in Ontario, the Northwest Territories and Saskatchewan. This review is important in terms of issues surrounding the development of a justice of the peace program as a community-based justice program, and more importantly, whether or not justice of the peace programs are, in fact, community justice programs. The difficulties involved in lay justice of the peace programs, such as the need for community participation, the relationship between the formal court system and the justice of the peace program, and the need for support resources are examples of such issues.

This examination will begin with a consideration of the recommendations that the Ontario Native Council on Justice (1982) made on the basis of its review of the various Native Justice of the Peace Programs in Alberta, Saskatchewan, Ontario, Yukon and the Northwest Territories. Each of these programs will contribute certain lessons in terms of the various issues which are to be considered. Each program serves native and northern communities to some degree. This review will begin with the Ontario Native Justice of the Peace Program which serves many native and northern communities in northern Ontario.

In 1981 an inquiry was conducted into the jurisdiction, structure, organization, administration and operation of the justice of the peace program in Ontario which directed considerable attention to local communities.

One of the most important recommendations that Mewett (1981) makes on the basis of his inquiry is the view that justices of the peace should be appointed from the community and that they should be representative of the community. As he states,

> ...what should be looked for in a Justice of the Peace is a person of reasonable intelligence, respected in the community and with the quality of being able to make decisions on a judicial basis and that knowledge or faimiliarity with the technical workings of 'The System' is something that can easily be acquired at a later date (1981:17).

In his report, Mewett (1981) recommends that more native people should be recruited and appointed as justices of the peace for local communities and reserves in Ontario. Furthermore, he recommends that there be some initial training for likely candidates and improvements to the training program which was offered.

Such issues as the need to recruit more native justices of the peace; lack of structure, and adequate remuneration, as well as the reluctance of individuals to serve as justices of the peace, were examined in detail by the Ontario Native Council on Justice (1982) in a review of the Native Justice of the Peace Programs in Alberta, Saskatchewan, Ontario, Yukon, and the

Northwest Territories.[1] The Council noted that for the disproportionate and substantial numbers of native people in conflict with the law, the justice of the peace plays a crucial role. This is especially true in those communities where the justice of the peace is the only contact that community members will have with the administration of justice.

Due to the importance of the role of the justice of the peace in the community, the Ontario Native Council on Justice (1982) identified qualities and characteristics that they felt were important for a justice of the peace. These included, fairness, the ability and willingness to learn, common sense, the ability to understand people and see both sides of an issue, extensive knowledge of the community, respect from community members, honesty, capacity to be fair, knowledge of the causes of court action, neutrality, and stability and maturity. This list of characteristics was arrived at following extensive interviews with justices of the peace from the jurisdictions noted above.

As a result of its investigation, the Council (1982) submitted the following recommendations concerning the function and office of the Native Justices of the Peace in Ontario. These recommendations are important to review, for their application not only to the Native Justice of the Peace Program in Ontario, but for other lay justice of the peace programs, especially those in native and northern communities. They highlight the potential sources of conflict and difficulty that may arise as

well as the advantages from the implementation of local justice of the peace programs, especially for northern and native communities.

One of the initial recommendations was for more native justices of the peace, especially where there were substantial numbers of native people appearing before the courts. The Council (1982) felt that native justices, who had extensive knowledge of the community and an awareness of native culture, could sentence appropriately. The Council (1982) did note, though, that at times it was difficult to recruit native justices of the peace due to the reluctance to sit in judgement of family, relatives, and peers.

To be able to hold court, the justice of the peace had to be authorized to do so by the band council (Ontario Native Council on Justice, 1982). The bands were encouraged to pass resolutions requesting the appointment of Native justices under Section 107 of the Indian Act.[2] It was hoped that judicially appointed justices would have the endorsement of the community, especially for the enforcement of the Indian Act and local by-laws, and that the decisions of the justice of the peace would be acceptable to the community.

The Council (1982) further recommended that a reserve court project with native justices should have a "tri-lateral" appointment (federal, provincial, and band council), and that there should be an evaluation after two years. It was hoped that such an appointment would assist native justices with matters

under the jurisdiction of the Indian Act, band by-laws, and any matters that arose as a result of their appointment. This would also include those sections of the Indian Act that gives band councils special legislative powers. Thus, the native justice of the peace would have provincial jurisdiction, jurisdiction over sections of the Indian Act, including those sections of the Indian Act that gives band councils special legislative powers.

The final recommendation which the Council (1982) made with respect to jurisdiction and authority, was the establishment of a community justice council, which would be presided over by a native justice of the peace. This justice of the peace could be from outside the community and would sit with two elders chosen by the band council to hear and pass judgement on cases brought to the justice council. One could speculate that having a justice from another community could provide some objectivity in terms of decisions made by the justice council since the elders would have extensive knowledge of the community. A justice council like this would be accountable to the community and could increase the community participation in the administration of justice, while decreasing the workload of the circuit court judge (Ontario Native Council on Justice, 1982).

With respect to the training of the native justices of the peace in Ontario, the Ontario Native Council on Justice (1982) recommended that a qualifying training course be available to new recruits. This training program would be completed in addition to any regular training course. Following a qualifying

course, there would be a probationary period as a non-sitting justice of the peace that would be followed by an apprenticeship program as a sitting justice of the peace. Senior native justices would assist with such training, sitting with the new justices of the peace in court as they were being trained and providing advice when needed.

With regard to the non-native justices of the peace who presided in courts in those communities where there were substantial numbers of native people, the Council (1982) recommended that such justices undergo a native awareness training program.

Another area that was of concern to the Ontario Native Council on Justices (1982), was remuneration for native justices. In its interviews with justices of the peace, the Council (1982) found that there was inadequate remuneration, and this was viewed as one possible reason why individuals were reluctant to become justices. The Council recommended that remuneration needed to be increased, and that funding be provided for training and travel expenses. Appropriate court facilities were also included in this recommendation, especially for those communities where there were no proper court facilities for the justices of the peace to conduct court matters.

Since this inquiry was completed by the Ontario Native Council on Justice, the Ontario Native Justice of the Peace Program has been firmly established. In September 1984, a

proposed plan for a circuit presiding native justice of the peace in Northwestern Ontario was submitted (Ontario Native Justice of the Peace Program, 1985a). A needs assessment, was conducted in northern communities in Ontario. On the basis of this assessment the plan was made for two full-time native justices to be hired, each of whom would go on circuit in various communities with which they were familiar. As of October, 1985, two native people had been hired to fulfill this task (Ontario Native Justice of the Peace Program, 1985b).

The primary purpose of the Ontario Native Justice of the Peace Program (1985b:3) is as follows:

> ...to promote the appointment of justices of the peace of native ancestry in areas of the province like Northwestern Ontario where high numbers of aboriginal people are residing or are appearing before the courts.

It is apparent that the purpose of this program is not to establish separate courts; rather, its goal lies in enhancing the sensitivity in the courts to the legal, cultural and socio-economic circumstances of native people. One could speculate that such a program may be an alternative to the formal court system in that it recommends the utilization of community members as justices of the peace. However, such a program could also be seen as an extension of the formal court system in that the local justices of the peace are seen as agents of the criminal justice system. In this sense, the justice of the peace program may be designed to increase the delivery of justice services at the local level for the formal court system.

The important distinction to make in terms of the Ontario Native Justice of the Peace Program is that this program encourages the use of community members to participate in the delivery of justice services to the communities. Community members who have extensive knowledge of the community and a sensitivity to the problems of the community are encouraged to become involved in the justice of the peace program. This enables the justice of the peace program to be localized in the sense that the justices of the peace who preside over the court are from the community and will be in a position to encourage community participation in justice services. Through this increased participation, the program becomes more and more community-based.

This is one of the key components of the Ontario Native Justice of the Peace Program (1985b:1) that enables the local justices of the peace to be,

> ...engaged in community legal education programs with Indian bands and native communities...and assist with the recruitment and training of part-time native justices of the peace in Northwestern Ontario.

This notion of community involvement by justices of the peace is an important ingredient of a community-based justice program. In the discussion to follow, which focuses on the Justice of the Peace Program in the Northwest Territories, it will be seen that a sensitivity and awareness of community attitudes is a very important component of the work of a justice of the peace.

On April 1, 1955 legislation was proclaimed which established the Justice of the Peace Court in the Northwest Territories (Finkler, 1976).[3] During the early years of the program upon appointment, the justice of the peace was given a copy of the Criminal Code, an instruction manual, and copies of the Territorial Ordinances. Other than this material, the untrained justice of the peace was left entirely to his/her own resources to perform the duties (Morrow, 1968).

This lack of legal training resulted in considerable criticism. Schmeiser (1968:31) states that, "No matter how well-intentioned they are, they lack the experience and training to administer justice in a balanced fashion."

During these early years of the program, criticisms were also directed towards the method of payment to justices of the peace. They were appointed on the recommendation of the R.C.M.P. and were paid for hearing a criminal case only if there was a conviction followed by a fine, which was to be paid by the accused. A justice of the peace who spent substantial time on a case and who acquitted the accused received nothing for his/her services. It was, therefore, impossible to determine whether the manner of payment created a tendency to convict (Schmeiser, 1968). It was Morrow's (1968:37) opinion that, "This system was barbaric and hardly needs this Commissioner's remarks that it is to be totally condemned."

Criticism was also forthcoming from the Northwest Territories Division of the Indian-Eskimo Association of Canada (1967). It was the Association's view that there were disparities in terms of the sentencing by justices of the peace concerning native citizens. It was the opinion of the Indian-Eskimo Association of the N.W.T. (1967:2) that,

> Undue harshness and wide variation in punishments combined with unfamiliarity on the part of many native citizens as to the nature of court procedures, legal rights and pleadings, all lead to a cumulative sense of injustice".

This criticism could also be reflective of the need for native input of the development and implementation into the justice of the peace program. There seemed to be little input, and perhaps this is due to the low number of native justices of the peace who were involved in the program.

In an attempt to resolve these problems, recommendations were submitted that included justices of the peace receiving simple manuals covering all the procedures, jurisdictional rules and principles that they might encounter, as well as all legislation, orders-in-council, and regulations (Schmeiser, 1968). Furthermore, the justice of the peace court was to be open to the public, at a place away from the police station (Morrow, 1968); there was to be improved procedures for the selection of justices of the peace with community input as to those selected, including more native justices of the peace; there were to be no more appointments of R.C.M.P. officers as justices of the peace; and finally, justices were to be paid for the work done (Schmeiser, 1968).[4]

In 1983, there were 110 justices of the peace in the Northwest Territories, of which 58 were of native origin (Whitford, 1984). A justice of the peace training program was implemented which included training conferences and a revised training manual (Government of the Northwest Territories, 1984).

During 1983, justices of the peace in the Northwest Territories heard 2,793 cases, 30% of the total number of cases coming before the courts. The remaining 62% were heard by Territorial Court Judges (Government of the Northwest Territories, 1984).

The justices of the peace now sit in most communities in the Northwest Territories, primarily dealing with summary matters. At the present time, there is at least one justice of the peace in every community, although as Whitford (1984) notes, there are more needed, especially in those communities where there is only one; this would help when there are cases when one justice cannot hear a particular matter due to conflict of interest. For example, while the number of native justices of the peace is just over half of the total number of justices of the peace, there is a need to recruit more native people.

Justices of the peace in the Northwest Territories are often recruited by the R.C.M.P., who may be the only criminal justice contact in the community, or by other community members (Bradley and Associates, 1983). A recruit is recommended to the Department of Justice and Public Services. The individual is usually a respected member of the community (Whitford, 1984).

The R.C.M.P. will do a background check on the candidate, and if the recommendation is accepted, it will then pass through the system of administrative approvals before the Government makes the actual appointment for a three year term (Whitford, 1984).[5]

In a sense, the justice of the peace program is not necessarily an alternative to the formal justice system, since the Government has the final say in the likelihood of a candidate being approved as a justice of the peace. Of course, this does not take away from the fact that a fundamental component of the program is that the justices of the peace be from the communities and that the program should encourage community participation in the delivery of justice services.

Furthermore, justices are to be sensitive to community needs and the problems within the community (Finkler, 1976). Finkler (1976) found, on the basis of his research in Frobisher Bay, Northwest Territories, that the local justices of the peace did not feel that they were acting solely on their own behalf and that their decisions were reflective of the general consensus of the community attitudes. Thus, justices of the peace felt a certain amount of influence, or susceptibility to the community attitudes within the community. This is an important component of a justice program since it is to be community-based and should encourage community participation.

The following discussion on the Saskatchewan Indian Justice of the Peace Program will highlight several key difficulties which may be encountered when a justice of the peace may have

too much knowledge of the community. As well, this program illustrates the dangers of not providing a community-based program with the appropriate resources and support needed to operate.

Saskatchewan Indian Justice of the Peace Program

The Saskatchewan Indian Justice of the Peace Program formally began in the early 1970's with the appointment of a large number of native Indians as justices of the peace in 1974, 1975, and 1976 (as cited in Griffiths, 1985). Eighteen of these original members are still on record as qualified justices of the peace; only one, though, still performs any duties (as cited in Griffiths, 1985).

This particular program was administered by the Department of the Attorney General working with the Federation of Saskatchewan Indians. The principal objective of the program was to offer justice of the peace services to Indians living on Saskatchewan reserves. To this end, appointees were Indians who lived on reserves receiving this service (Saskatchewan Attorney General's Office, 1982). The Federation of Saskatchewan Indians, working through the Co-ordinator of the program, were able to recommend and approve potential candidates (as cited in Griffiths, 1985). Thus, this justice of the peace program was designed to improve the delivery of justice services on a particular reserve rather than as an alternative to the adversarial system.

The duties of the Indian Justice of the Peace included the following (Saskatchewan Attorney General's Office, 1982).

1. Holding Court. The justice of the peace will hear the accused's plea, refer not guilty pleas to the Provincial Court for trial, and fix sentences for guilty pleas.
2. Paperwork. The justice of the peace completes documents corresponding to the decision he/she makes. This includes taking affidavits, issuing warrants of committal upon conviction, and issuing probation orders.
3. Completes monthly reports and documents required by the Department of the Attorney General.
4. Remits fine monies and refers convicted persons to the fine option program.

Numerous difficulties were encountered, however, that ultimately resulted in the termination of the program (as cited in Griffiths 1985). The last regular Indian Justice of the Peace Court was held in December, 1981. While the Indian justice of the Peace Program was designed to make basic court services available to individuals near their home and to provide justice services with a local flavor, there were a variety of problems encountered. Gasior notes, for example, that the justices of the peace received no judicial help at all to assist them with their abundance of paperwork and justices of the peace lacked a general understanding of all the paperwork required of them (as cited in Griffiths, 1985). Furthermore, the appointment of justices of the peace had political overtones, the justices being appointed by an Order-in-Council; that meant the

Government had the final say in selecting new justices of the peace.

In addition to these problems, the powers of the justices of the peace were limited in statute (as cited in Griffiths, 1985). This meant that the justices of the peace had no authority to sit at a trial, only having the power to hear guilty pleas and assess penalties. As Gasior (as cited in Griffiths) states,

> Some of the justices of the peace who perhaps felt comfortable with what they were doing, felt they should be allowed to conduct trials, at least on summary conviction matters. An unsuccessful attempt was made to lobby the provincial government and these individuals then lost interest (1985:2-45).

Additional problems which led to the demise of the Indian Justice of the Peace Program in Saskatchewan included the pressures that the justices of the peace felt from their families and friends in their communities, in terms of their role as a justice of the peace (as cited in Griffiths, 1985). Thus ostracism and harassment were encountered by the justices of the peace and resulted in their reluctance to continue their duties.

As a consequence of these difficulties, the Indian Justice of the Peace Program in Saskatchewan is now defunct. While its basic objectives of making court services available to local reserves and providing justice services with a "local flavor" were optimistic, this did not insure the success of the initiative.

One of the most important lessons to be learned from the failure of the Indian Justice of the Peace Program in Saskatchewan, in terms of the development and implementation of a community-based justice program, is that while a program may strive to have a "local flavor" in the sense that justices of the peace are sensitive to, and aware of, community problems, the degree of accountability and political control over the justices of the peace in terms of the formal criminal justice system or the Government may have an effect on the operation of the program itself. For example, if a justice of the peace is to be used to provide justice services to the community, then he/she would have to be provided with the appropriate resources to do so. This would relate to the assistance needed to complete the paperwork, and increased authority to be able to deal with summary conviction trials. Furthermore, the justice of the peace must be aware of who he/she is accountable to in terms of considering community values and needs in sentencing. What the community may perceive as a need may be different from what the formal justice system views as a need.

Conclusion

It would seem that the key to the development and implementation of any of the programs that have been previously discussed is community participation and direct involvement of community members in the operation of the program. This would include all the various groups that are present within the

community. No one group should hold the majority of say in the objectives of a program; it should not be biased in favor of any one particular interest group.

Throughout the preceding presentation and discussion of various justice programs, it becomes evident that there are difficulties with such programs, the assumptions that tend to be made about such programs, and lessons to be learned from them. Such examples are illustrative of the complexities of communities, the problems of interface between community-based initiatives and the existing criminal justice system, and the extent to which such community-based initiatives can be viewed as alternatives to the formal criminal justice system, or adjuncts to it.

The following discussion will focus on several of the lessons that have been learned from these programs, noting their potential and pitfalls. This discussion will, thus, provide a broad framework that will be important to bear in mind prior to focussing on the specific programs in the Yukon Territory.

One of the most important lessons to be learned from community-based programs is the need for community input and participation in the actual development of a program. As stated earlier, the goals and objectives of a program such as the High Level Diversion Program became lost as the program became more and more an extension of the formal court system. The effectiveness of the prescribed goals decreased as interest in the program decreased, to the point that the program ceased

operation. The program also became difficult to operate due to the relationship between the various parties that were directly involved in the program, such as the police, the Crown Attorney, the Native Counselling Services of Alberta, and the Community Diversion Committees.

The relationship that a community-based justice program has with the formal justice system is a very important issue to address. In terms of the programs discussed, the degree to which a program is actually "community-based" may vary, such as the difference between a mediation program that provides a dispute resolution service as an alternative to the formal courts, to the justice of the peace program, that may, in fact, be viewed as an extension of the formal court system which is designed to improve justice delivery at the community level incorporating community members as justices of the peace. While both programs may be based within the community and involve members of the community in their operation, they may be viewed by community members as entirely different. For example, a lay justice of the peace program may be viewed by community members as part of the formal criminal justice system, and not as an alternative to such a system.

This relationship is also important in terms of the actual development of a community-based program. If the community itself is not involved in the development and implementation of the program, such as in the case of the lay justice of the peace program, the program may not in essence be "community-based".

Furthermore, in terms of accountability, it is questionable who the program is accountable to, the formal justice system, or the community. One could also suggest that the degree of accountability will vary according to the relationship that the program has with the formal criminal justice system and the degree of autonomy that the program has.

Developing a program that is sensitive to the conflicts within the community is also seen as an important component. This was illustrated through the discussion of justice councils. This example also centred on the need to have a strong administrative base if a program is to operate successfully. If community interest is lacking, in terms of participation in the program, this will also affect its continued operation. This can also lead to the demise of a program, such as in the case of justice councils.

Another source of difficulty which must be considered, is the need to incorporate a cross-representation of community membership, both in the development and implementation of a program, and throughout its continued operation. In terms of mediation programs such as community arbitration programs, such a service could be provided for every group, and by every group, within the community. In terms of the lay justice of the peace program, the issue has been raised that it is important to have more native justices of the peace for those communities where there is a high population of native people and where there are more natives coming before the courts. Thus, the need for more

native people to become involved in the delivery of justice services, especially in terms of northern communities is a major concern.

Throughout the presentation of these various initiatives, it has become apparent that community interest and participation is an important ingredient to the operation of such programs. Community interest would require education. If a program, such as mediation or, the High Level Diversion Program, is to continue to operate, community awareness concerning the service that the program provides is necessary. Public legal education as a component of a community-based program, and a forum for increased awareness, did not seem to be adequately addressed in any of the programs examined. Educating the community could enhance the possibility of the involvement of the community. For example, one of the goals of the Legal Service Centre in Frobisher Bay, Northwest Territories (Enright, 1984), is to increase the participation of community members in the delivery of justice services to the community. Programs such as justice councils illustrate the potential sources of problems when there is a lack of such community participation.

The above issues serve to illustrate the complexities of community-based justice programs. Several key problems have been noted as potential sources of conflict in terms of their development, implementation, and continued operation. Included in this discussion was a focus on the need for programs for northern communities and the need to increase the involvement of

native people in the delivery of justice services, for example, as justices of the peace.

In the remaining chapters of this thesis, several initiatives in one jurisdiction, the Yukon Territory, will be examined. While the focus of this analysis will be on the lay justice of the peace program, mediation and diversion will be used for illustrative purposes only. Throughout this examination, it will be important to keep in mind the noted sources of problems and pitfalls of such initiatives, as well as their potential, and to see if these have occurred in the programs discussed.

NOTES

1. The Ontario Native Council on Justice (1982) is comprised of eight native organizations, representing status and non-status Indians and Metis, both on and off reserves.

2. This would apply not only to those regions which fall under the jurisdiction of the Indian Act. It was also recommended by the Council (1982) that the Attorney General of Ontario support dual appointments under Section 107 of the Indian Act for all provincially appointed justices of the peace whose Section 107 Indian Act appointments have been requested by the band councils.

3. Justices of the Peace, under Section 722(1) of the Criminal Code have jurisdiction over minor offences in violation of the Criminal Code, Federal Statutes, and Ordinances of the Northwest Territories (Finkler, 1976).

4. An Ordinance respecting Justices of the Peace, 1970, discontinued the eligibility of any member of the R.C.M.P. for appointment as a Justice of the Peace, or for any commissioned officer of the force to continue in such a capacity (Finkler, 1976).

5. The Inspector of Legal Services will swear in the appointee and train him/her. As of 1984, a justice of the peace appointed for a three year term will receive an honorarium of $200.00 yearly and a paid fee of $5.00 for each case on the docket, regardless of the outcome; for all remands, or adjournments, $1.00; and for show cause hearings, $5.00, between 8 a.m. and midnight and $10.00 after midnight (Whitford, 1984).

CHAPTER IV

COMMUNITY JUSTICE PROGRAMS IN THE YUKON TERRITORY

Introduction

As noted in the introductory chapter, the major objective of this study is to present and discuss many of the issues relevant to the development, implementation, and delivery of community-based justice programs to natives and northern communities. This has provided this thesis with a policy focus and relevance rather than just a descriptive function. Previous chapters have highlighted areas of concern in terms of the problems and potential sources of conflict, as well as the potential advantages of several such programs.

In the discussion to follow, an analysis of several programs which are operating in the Yukon Territory will be presented in light of these issues and concerns. Examples, include issues surrounding the development of a community-based program in terms of community input, participation and involvement, issues surrounding the relationship that the particular program may have with the formal justice system, issues regarding whether the program itself is an alternative or is adjunct to the formal system; issues about community representation in the program, especially if the majority of the community population is native; and the issue of accountability of the program. In regards to the latter issue, we need to know who it is accountable to, how the community is to become aware of the

program, and how and who will evaluate the program. These are all questions that will be addressed through an analysis of the various programs in the Yukon Territory.

The importance of conducting this inquiry into the Yukon's community-based programs was heightened by the increasing concern in North America over the effectiveness of the delivery of justice services to native and northern communities. Several concerns were indicated in the discussion of the northern court circuit, for example, the lack of community responsibility in handling its own problems and the need for more community control over justice services. At a period in time when there is concern over creating and maintaining programs that are to be based within the communities actively incorporating community participation, an exploratory examination into the existing community-based programs in the Yukon Territory may provide valuable insights into their viability and the potential problems of such initiatives.

The Yukon Territory

The Yukon Territory forms a 200,000 square mile triangle (Morrow and Hume,1979:11). It borders on the Province of British Columbia, and its east and west boundaries aline with the Northwest Territories and Alaska. At the top of this triangle, the Yukon stretches as far north as the Beaufort Sea, including one small island in the Arctic. The land ranges from jagged snow-capped peaks to rolling sand dunes and open tundra in the

northern half of the Territory (Morrow and Hume, 1979). The Yukon contains hundreds of miles of rivers, the largest being the Yukon River, which flows 2,000 miles from the northern Coastal Range to drain into the Bering Sea.

The permanent population of the Yukon is approximately 24,743 (Yukon Department of Health and Human Resources, 1985) and is spread thinly throughout approximately 14 communities. The total native population in the Yukon, as of the 1981 census, was 4,045 (Yukon Territorial Government, 1985). Whitehorse, with a population of approximately 17,265, is the centre of the Yukon Territorial Government (Yukon Department of Health and Human Resources, 1985).

The majority of the 14 communities in the Yukon have populations of under 1,000 (Yukon Department of Health and Human Resources, 1985). All except Old Crow, the Yukon's most northerly community, are accessible by road.

The Delivery of Justice Services in the Yukon Territory

While there are 14 communities in the Yukon Territory, two thirds of the population reside in Whitehorse where the majority of legal and social services are situated. These services include judges, lawyers, probation officers, native courtworkers, social workers, mediation programs, diversion programs, and public legal education programs.

This also includes court facilities. At the present time, Whitehorse has two courtrooms, for its Territorial Court, Youth Court, Small Debts, and Justice of the Peace matters, and one courtroom for the Supreme Court. There is one courtroom in Watson Lake, and the courtroom/city council chambers in Dawson City. The rest of the communities will hold court in community halls, offices, and other suitable facilities (Yukon Department of Justice, 1984).

Within the Yukon, there is a Superior Court of civil and criminal jurisdiction, which is the Supreme Court of the Yukon. It consists of the Court of Appeal and the Supreme Court. The judges of the Court of Appeal include judges from Whitehorse, Yellowknife, and all the judges of the British Columbia Court of Appeal (Yukon Department of Justice, 1984). The Supreme Court includes the judge from Whitehorse, and judges from Yellowknife, Alberta, and British Columbia, including deputy judges (Yukon Department of Justice, 1984). Once a week, Youth Court is held in Whitehorse, presided over by a Territorial Court judge. Cases involving youths are referred to the Youth Court from all the communities in the Yukon. Territorial Court is held in Whitehorse and the court visits the other communities regularly, via a circuit court system. This circuit court system is described below.

The Northern Court Circuit

The Territorial Court of the Yukon consists of two judges, with one appointed as the chief judge (Bill, 1984). These judges preside over the circuit court that visits all the communities outside of Whitehorse on a regular basis to deal with court-related matters which are outside the jurisdiction of the community justice of the peace. Justice of the Peace Court is held at least twice a week in Whitehorse. In the outside communities, the Justice of the Peace Court may be held once a week dependent upon the number of matters with which the justice of the peace has to deal. It may be that the Justice of the Peace Court may only be held once a month.

Judges make trips to the communities outside Whitehorse on a regular basis, usually three or four times a year. While all but one of the communities is serviceable by road, justice service delivery is based on a "fly in, fly out" basis (Bill, 1984:1). The court circuits vary in length from one day to two weeks, with the average circuit court being one week. This length depends on the number of cases that the local community justice of the peace can deal, prior to the arrival of the circuit court judge. It may also be that certain cases are referred to the courts in Whitehorse to be dealt with, for example, Youth Court matters, civil or Supreme Court matters.

The court party travels with the judge. This party consists of a court reporter, court clerk, legal aid lawyers, Crown

attorney, and probation officer (Bill, 1984:1). A native courtworker used to travel with the circuit court but due to a lack of funding this has been discontinued. The judge, court reporter, and court clerk travel together, arriving in the community the day prior, or on the actual court date, depending on the distance of travel. In some communities, the senior resident justice of the peace may act as the court clerk, this helps the justices to learn more about the court proceedings as well as assisting the judge.

Yukon Legal Aid designates which lawyer is to go to a particular community. As Bill (1984:1) notes, lawyers vary in the arrangements they make to see clients:

> Some arrive weeks in advance and then again on the court date. Some lawyers arrive one or two days prior and some arrive on the court date, depending on the distance being traveled and the size of the docket.

The Crown attorney will usually arrive in the community one or two days in advance of the court date. Once again, however, this depends on the distance of travel and upon which day the court date falls (Bill, 1984:2). The probation officer will also arrive in the community the day before, or on the court date, depending on the number of pre-sentence reports that have to be ready for the court (Bill, 1984).

In between circuit court visits, most of the court-related matters in the communities are dealt with by local justices of the peace, of which there are approximately 40, usually at least two justices of the peace in every community. As will be

discussed, the justices will usually handle less serious or summary conviction matters, and will adjourn the more serious matters until the next circuit court date. It is interesting to note that during the 1983-84 year, justices of the peace handled 67% of the cases on the court dockets, compared to the judges handling 33% of the cases (Yukon Department of Justice, 1984). During this year, a total of 7,293 adults were charged and 226 young offenders. There were 36 wardship cases, 28 maintenance cases, 10 civil cases, and 670 small debts claims for the whole of the Territory (Yukon Department of Justice, 1984).

In addition to the justice services provided by the justice of the peace courts, the courts in Whitehorse and the circuit court, there are other programs that provide justice services. These include mediation and diversion programs. While the focus of this inquiry into community-based justice programs will be on the justice of the peace program which is to be presented in more detail in the next chapter, programs such as mediation and diversion will be discussed here in terms of the services they provide and their feasibility and potential as community-based justice programs in the Yukon.

Mediation

In Fall 1983, the Chief Judge of the Territorial Court in the Yukon began exploring the feasibility of establishing a mediation program.[1] A decision was made by the Minister of Justice, Yukon, to proceed and a training program was organized

for the first four-day training course for mediators that was held in December, 1984. Nineteen candidates, both native and non-native, attended the course, including individuals from Whitehorse, Dawson City and Watson Lake. The training was designed around skill development, utilization of mediation scenarios and video camera work used to reflect on methods of mediating and conflict resolution.

Of those individuals who attended the course, nine were considered to be qualified to conduct mediations, while the three left required additional training (Wright, 1984a). Subsequent training was provided, including workshops in the areas of small claims and family law as well as yearly training sessions for new recruits, this includes both native and non-native individuals.

The Yukon Government approved a pilot program for Small Debts Mediation, since this was considered a well-defined problem and the court process was flexible enough to adapt and use such a program.[2] Mediation was seen as a cost-effective alternative to Small Debts Court. To-date, the program has dealt with well over 100 cases, "...with a 95% success rate".[3]

In January 1984, the Mediation Program Coordinator began a mediation program that dealt with family maintenance, custody, and separation matters. As of the summer of 1985, approximately 40 cases have been mediated with an estimated 50 - 60% success rate. In an interview with the Family Mediator in Whitehorse concerning the operation, costs and how the success rate of

family mediation was defined, he stated to the researcher that:

> Success was judged by one of two factors; if a contract was drafted which is agreed upon by the two parties involved; or, if there is not an agreement but at least one third of the issues have been resolved as a result of the mediation process.[4]

Referrals to the Small Debts Mediation Program primarily come from the Small Debts Court Clerk who will advise individuals of the feasibility of mediation rather than the formal court process.[5] Disputes are filed at the Territorial Court Registry in Whitehorse, and the Small Debts Court Clerk will decide whether or not a case may be suitable for mediation rather than Small Debts Court.

Referrals to the Family Mediation Program primarily come from lawyers only.[6] Additional referrals, though, may come from judges and native courtworkers. As well, individuals who have a dispute that they would like to have resolved may approach the Family Mediator themselves. This includes individuals from communities outside Whitehorse, since Whitehorse is the only community at the present time that has mediation available.

The cost of mediation varies. With small debts mediation the cost is $25.00, family mediation costs $50.00 for one session. As the Family Mediator stated:

> This fee is shared by the two parties involved when they are both present with the Mediator. There are cases where Legal Aid will pay for the costs of family mediation. The Family Mediator will bill the lawyers who will in turn bill Legal Aid if the clients are eligible.[7]

At the present time, there are three small claims mediators and one family mediator, although training programs are to be available for new recruits. When asked a question concerning the recruitment and payment of mediators in the Yukon, the Mediation Coordinator stated that:

> In order to recruit individuals to become involved in the program, there needs to be a 'reward' for the services provided which could also serve as an incentive to others who are interested in being trained as mediators. Applications for funding have been made to the Territorial Government in the hopes of being able to have the funds to pay mediators for their services.[8]

The mediation process itself is quite simple, similar to the procedures that have been presented earlier in the discussion on mediation. The two parties will meet with the mediator, whether it is to be a small debts or family matter, and try to resolve the dispute through open communication and direct participation.

In a discussion with a mediator who was involved in small debts mediation, the question was asked why she felt that mediation was an alternative to the court process. She stated:

> When individuals have to go through the formal court process they may get lost in the proceedings, never understanding what exactly occurred, and then having to pay lawyers fees, damages, and court costs, not to mention the time lost in wages.[9]

The actual number of sessions for family and small debts mediation varies with the particular case. Each session may be one hour in length. The sessions may vary from one to four hours to as much as 12 to 16 hours, especially in the case of family mediation where there may be a large number of issues to be resolved.[10]

In a discussion with the Family Mediator, questions were asked concerning what the role of the mediator was in resolving the disputes. He stated it was his view that the role of the mediator was not to "fix" the problem but, rather to assist the parties to discuss the various avenues that were available to them in order to resolve the dispute. In this sense, the mediator will propose possibilities for resolving the dispute, but will not resolve the problem for the parties.[1] Thus, it seems that the role of mediator is one of a facilitator of communication. The two parties will resolve the dispute themselves and a contract, which is legally binding, will be drawn up at the end of the sessions. This contract is to ensure that the two parties will not violate the terms of their agreement. If this does occur, the option is available to return to the formal court system for dispute resolution.

Wright (1984:6), in his proposal for mediation in the Yukon, recommends that there be community-based mediation panels on a volunteer basis, which offer a credible alternative to the formal court system. This program would initially be administered by a small staff, a program manager, and an administrative assistant.

Wright (1984:7) has also proposed that mediation training be available to Band Councils in the Yukon Territory. This progam would identify unique band needs and adjust the mediation process to meet these needs. Volunteers would be recruited, primarily native, who would be trained and who would be directly

involved in the implementation and control of the program. Wright (1984a) sees the mediation process as adaptive to traditional native customs that could be used by a Tribal Council.

School-based mediation is another program which could be developed. Such a program would involve identifying specific schools and their mediation needs, recruiting teachers and student volunteers, designing and implementing training programs, advertising mediation as an option for conflict resolution and monitoring and evaluating the effectiveness of such a program (Wright, 1984:7). This concept involves training students as "conflict managers" to resolve conflicts among students. Teachers would be trained to instruct students in such a process and provide a supervisory role.

In a discussion with John Wright, he also proposed the implementation of "Volunteer Community Panels".[12] The idea for this program came by way of a dispute between two individuals who had proceeded through mediation to resolve a dispute concerning a barking dog. Following a successful mediation, the proposition was put forth to these two individuals whether or not they would be interested in resolving any other disputes of this nature which occurred in their neighborhood. The local by-law officer would refer complaints to this panel who would assist the parties in resolving the dispute.[13]

The mediation programs that now exist in the Yukon Territory highlight several issues concerning the development and

implementation of community-based justice programs, some of that were addressed in the previous discussion, although others were not while tentative answers to the issues will be discussed in Chapter VI, they are important to raise here. For example, one issue which has been raised previously, which is also illustrated in the mediation programs in the Yukon, is the degree to which the communities themselves are actually involved in the designing and implementation of the program itself. The Small Debts Mediation Program came about as a result of recommendations of the Chief Judge of the Territorial Court. This brings up the point as to just how "community-based" is a program if its roots are to be found within the formal criminal justice system, a specific interest group, or the Government?

Another issue that is raised, through the illustration of the mediation programs in the Yukon, concerns the number of individuals involved in the programs' operation. The question is raised whether a program is actually "community-based" when there were only three Small Debts Mediators and only one Family Mediator. Also for the present, this program is only based in Whitehorse. The issue to be addressed is whether or not a program, even though it is operated by community members and provides a service that is seen as an alternative to the formal courts, is still a "community-based" justice program by the fact there are so few individuals working within the program? Having so few individuals working in a program could be frustrating for those who are devoting a lot of their time to the continued operation of the program. It is important to note, though, that

there is a constant recruitment of individuals who could be trained as mediators, and plans are being made to expand the program to communities outside Whitehorse. Furthermore, this program is still relatively new in the Yukon. Educating members of the public as to the services available and recruiting new mediators is an important part of its acceptance in the communities; this takes time to implement. This process may not detract from the primary goals of the program to provide a dispute resolution alternative that is cost effective and directly involves individuals in their own problem solving. Recruitment and community awareness should be primary objectives to encourage community involvement.

Another issue that has been raised by this program example is the paying of people involved in a community-based program. One has to ask whether or not a a program can be community-based without becoming too formalized or bureaucratic in the sense of salaries, organizational structure, accountability, and overall objectives? It has become obvious from the previous discussion on types of community-based programs that informality is an important ingredient of a community-based program involving community members in its operation. Community arbitration boards are an example. On the other hand if a program does not have adequate support and administrative services, those who work within the program may not necessarily be able to provide the service the community needs. Through a discussion of diversion programs in the Yukon, this issue of just how formalized a community-based program should be and the potential hazards of formalization will be illustrated.

Diversion

With the introduction of the Young Offenders Act in April 1985 and its "Alternative Measures" provision, diversion programs were designated as one method through which the law could meet the needs of young offenders and increase community participation in a justice program. Diversion, in essence, redirects a young offender who has been charged with a criminal offence into a community-based program whereby when the youth meets specific conditions as specified by a contract, she/he will be able to avoid a criminal conviction and record.

Diversion, then, is designed to increase community involvement in assisting with the welfare of the young people in a community. A priority also is to acknowledge the concerns of the victim and the community and to hold the young offender responsible for her/his actions.

There are two pieces of legislation that define who is eligible for diversion in the Yukon Territory: 1) the Young Offenders Act; and 2) the Children's Act, which is Yukon Territorial Legislation. (Yukon Public Legal Education Association, 1985). Those eligible under the Young Offenders Act include persons over the age of 12 and under the age of 18, who are alleged to have committed an offence defined in the Criminal Code. Those eligible under the Children's Act are persons over

the age of 12 and under the age of 18 who have allegedly violated a Yukon Territorial or Municipal Law, such as driving without a motor vehicle licence (Yukon Public Legal Education Association, 1985). Many offences that are committed by young offenders in the Yukon can be handled at the community level rather than by the formal court system due to the less serious types of crimes that youths are committing. The courts are faced with an increasing backlog and delays in the usual restrictions in handling cases involving young offenders, thus diversion programs were designed with the objective of relieving the courts of some of this burden.

The Diversion Program operating in Whitehorse offers young offenders an alternative to the formal court process so that they may avoid a criminal record. In a discussion with a Diversion Committee member concerning the development and operation of the Diversion Program, including its "success" rate, questions were asked as to how many youths had participated in the program and succeeded. He stated that as of August 1985, approximately 70 youths had participated; only three had been known to have re-offended[14]

The program began formally in 1982 as a sub-committee of the Juvenile Court Committee of Whitehorse. On December 31, 1984, the Whitehorse Diversion Committee was accepted under the Young Offenders Act as an "Alternative Measure":[15] Under the Young Offenders Act, the Yukon Territorial Government was given the authority to establish the Children's Act that has provisions

within it to establish a government appointed body of individuals called a Diversion Council. The Diversion Council would oversee any diversion programs that are implemented in the Yukon Territory. This authority has important implications for a "community-based" program, which will be discussed later.

As of August 1985, the only diversion programs operating in the Yukon Territory are in Whitehorse, Watson Lake, and Haines Junction. This is primarily due to the recent inception of the Young Offenders Act. The Diversion Program in Watson Lake began in 1979 through the efforts of the Native Women's Association of Watson Lake, who saw a need for a program that could participate in solving some of the problems of the community, especially with respect to young people. The Diversion Committee is essentially a volunteer committee, comprised of a group of citizens who wanted to become involved in the program (Watson Lake Diversion Program, 1984). The Committee works in cooperation with the courts, police, probation department, human resources, education and medical staff in the community to provide an alternative for young offenders.

In discussion with the probation officer in Watson Lake, who is also involved indirectly in the diversion program, questions were asked as to the actual diversion process and the types of cases that come before the Diversion Committee. She stated that most of the cases are referred to the Diversion Committee by the R.C.M.P. Referrals being made on the basis of the charge being a first offence and less serious offences. Examples would include,

mischief or liquor-related charges.[16]

The above sources of referral were not the only ones utilized by the Diversion Committee. In a discussion with a member of the Watson Lake Diversion Committee, questions were asked as to the actual diversion process and how cases are dealt with. It was found that referrals may also come from schools or parents.[17] When a case is referred, a general meeting of all Diversion Committee members is called to discuss the case and decide what is the appropriate solution. Usually two members of the Committee are asked to handle the case, and this team will decide what course of action to take concerning the youth. A written agreement is undertaken that requires the youth to complete certain obligations within a given time, such as an apology to the victim, community work, or restitution. As of July 1984, approximately 30 cases had been referred to the Diversion Committee in Watson Lake.

While no exact figure was available, it was thought that nearly all were successful.[18] During 1984-85, this program was fairly inactive, awaiting Yukon Territorial Government approval to resume operation under the supervison of the Government appointed Diversion Council. The latter is a crucial issue, and will be addressed later in this discussion.

The Diversion Program in Whitehorse operates in a way similar to that of the program in Watson Lake, except the team of Committee members to handle a particular case is three rather than two. The program in Whitehorse is fairly active. During the

summer of 1985, May through August, a total of 12 youths were observed to be diverted from Youth Court to the Diversion Committee. Such youths are usually referred by the Crown Prosecutor when the youth makes his/her first appearance in Youth Court in Whitehorse. This is an area of concern. If the purpose of a diversion program is to divert young offenders away from the formal system, having the youth make a first appearance in court detracts from this goal, while at the same time taking away the "community-base" of the program.

In Whitehorse, the Diversion Committee is composed of approximately 12 core members who devote much of their time to the operation of the program. There is no fee charged by the Diversion Committee for any services provided, nor do any of the volunteers receive any payment for the time they spend on diversion cases. A diversion team will meet with the parents and the young offender and work out a suitable contract whereby the youth will meet certain requirements within a certain time period, usually one month to possibly one year. If this is done, then the charge will be dismissed and the youth will not have a criminal record. If the youth fails to meet the requirements of the contract the case will be referred back to the Crown Attorney's Office.[19]

While the Diversion Committee does have 12 core members, these members are all quite involved in the operation of the program. To date, the Diversion Committee has only a part-time office and part-time secretary with limited financial support.

Due to the lack of administrative and support services the program will undoubtedly suffer. It has become difficult for the Diversion Committee to operate and administer the increasing number of cases which are diverted to them while still trying to maintain the service for the community.

Under the law, the Diversion Committee has responsibility for gathering and evaluating information that is seen to be relevant for a particular case (Yukon Public Education Association, 1985). The Diversion Committee is also able to establish its own eligibility requirements, design its own format, and the requirements for the implementation of ea[redacted] diversion case. Under the Children's Act, the Diversion Council, the Government appointed Council, has the authority to govern the Diversion Committee while not being active as Diversion Committee members. This Council may make certain requests of the Diversion Committee that may be deemed by the Diversion Committee as unsuitable and inappropriate. For example, the Diversion Council may require an intake form to be filled out for every young offender with whom the Committee deals. These forms could thus be utilized for evaluations conducted on the program. This form would contain the young offender's name, the victim's name, the employer of the young offender, and the name of the employer.

The objection to such a form lies in the fact that within the mandate of the Diversion Committee, confidentiality is deemed as crucial for a successful diversion. The young offender

must know and understand that everything regarding his/her case is confidential and will be destroyed following a certain time period.

The request for the intake form raises an important issue concerning community-based justice programs. If the objective of such a program is to provide an alternative to the formal criminal justice system and the "institutionalized" atmosphere of this system, the creation of such intake forms increases the formality of a program and brings a youth back into a process from which he/she is being diverted. In essence, the diversion program becomes an alternative within the formal criminal justice system which tends to bureaucratize the diversion process.

This relationship between the Diversion Council and the Diversion Committee serves to illustrate a very important issue concerning the degree of autonomy that a "community-based" justice program may have. For example, if the Diversion Council is to have a final say, and has the authority as to the decision whether a diversion program in any community in the Yukon can operate, what effect does this have on the community autonomy of such a program? Furthermore, who is the program to be accountable to, the community, or the Diversion Council that is appointed by the Government? The political implications in terms of this accountability may, in turn, have an affect on the community acceptance of the program if it is seen to be serving the interests of one specific group.

If a diversion program is to be an alternative to the criminal justice system, how can it operate when its daily operations are succumbed to the mandate of the Diversion Council? Similar to the issue raised with respect to the lay justice of the peace programs, a community-based program may not be as such an "alternative" to the criminal justice system, rather only an extension of such a system. This is illustrated not only by the fact that the R.C.M.P. and the Crown Attorney play a large role in the decision of who to divert, that in the past, the youth has had to make a first appearance in court, and finally, as evidenced by the role of the Diversion Council and its authority over any diversion program, which is to operate in the Yukon Territory. As will be discussed in Chapter VI of this thesis, this issue may be difficult to resolve in terms of both the development and implementation of any community-based justice program.

Conclusion

This chapter has discussed several issues that must be considered in the development and implementation of community-based justice programs. Specifically, the mediation programs in the Yukon illustrate issues such as the level of community involvement in terms of the number of individuals active in a program; the implications involved in the development of a program in terms of the input from the formal criminal justice system; and the issue of funding, in terms of

paying individuals involved in a community program and providing support services. Such factors may have an impact on the degree of formality of the program, its organizational and administrative structure, who it is accountable to, and how the community perceives the program. This may ultimately affect the community's decision whether to participate in the program or use its services.

How the community perceives a "community-based" justice program is also important to consider in terms of the program being seen as an alternative to the formal criminal justice system or an extension of this system. One would also question the role of the government. The relationship between the Government appointed Diversion Council and Diversion Committees in the Yukon may serve to illustrate the potential hazards of this issue in terms of the degree of autonomy that a community-based program may have and the political inter-play. The question arises whether or not a program that intends to be based at the community level, can remain to do so while still being accountable to a government mandate? This raises the issue of a community-based justice program evolving into a bureaucratic extension of the formal court system due to the control that may be exercised over its operation. The example of the diversion programs in the Yukon indicate the need for a community program to have appropriate administrative and support services while maintaining its base within the community it serves.

These issues are included in those that will be addressed through an examination of the lay justice of the peace program in the Yukon Territory. Many of the issues that have been presented in this chapter, and in previous chapters in terms of the development and implementation of community-based justice programs will be examined through the analysis of the lay justice of the peace program. Following this analysis, an attempt will be made to resolve many of the issues which have been discussed. Possible answers to questions raised concerning the development and implementation of community-based justice programs, specifically for northern ar ative communities, will be recommended in terms of their policy implications and included in the conclusion of this thesis.

NOTES

1. Interview with John Wright, Mediation Program Coordinator, Whitehorse, Yukon, 9 July, 1984. Questions were asked concerning the development of the mediation programs, their "success" rates, and operation.

2. In an interview with John Wright, Mediation Program Coordinator, Whitehorse, Yukon, 17 May, 1985. Questions were asked concerning history, development, operation and types of services offered by the small debts and family mediation programs.

3. Ibid.

4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

8. Interview with John Wright, Mediation Program Coordinator, Whitehorse, Yukon, 5 June, 1985. Questions were asked concerning the recruitment of new mediators and funding.

9. Interview with Sande Copeland, Justice of the Peace and Mediator, Whitehorse, Yukon, 19 June, 1984. Questions were asked concerning why she felt mediation was an alternative to the formal court process, and what was involved in the mediation process, specifically in relation to small debts mediation.

10. Interview with John Wright, Mediation Program Coordinator, Whitehorse, Yukon, 5 June, 1985.

11. Ibid.

12. Interview with John Wright, Mediation Program Coordinator, Whitehorse, Yukon, 5 June, 1985.

13. Ibid.

14. In a discussion with Andre Dupuis, Diversion Committee member, Whitehorse, Yukon, 6 August, 1985, questions were asked concerning the development of the diversion program and what is involved in the process, as well as the number of cases.

15. Ibid.

16. On a circuit court trip to Watson Lake, Yukon , 23 and 24 July, 1984, the opportunity became available to discuss the Watson Lake Diversion Program with local probation officer, Sharon Caouette. Information was obtained on the history, operation and sources of referral.

17. Discussion with John Molloy, Diversion Committee member, Watson Lake, Yukon, 24 July, 1984. The discussion focused on the history and operation of the program, as well as the sources of referral.

18. Ibid.

19. Information concerning the diversion process was obtained from Mary Kane, Whitehorse Diversion Committee Chairperson, Whitehorse, Yukon, 4 June, 1985.

CHAPTER V

THE JUSTICE OF THE PEACE PROGRAM IN THE YUKON TERRITORY

Introduction

One of the key questions to be addressed in this chapter is whether or not the lay justice of the peace program in the Yukon Territory is, in fact, a community-based justice program. This issue will be discussed with respect to the relationship that the justice of the peace program has with the formal criminal justice system in terms of the development, implementation, autonomy, supervision, and accountability of the program. It is hoped that a review of the justice of the peace program in the Yukon will answer many of the questions that have been raised while indicating key areas of concern in terms of the development and operation of a community-based justice program specifically for northern and native communities.

The Yukon Justice of the Peace Program was established in 1982. At this time, a Justice of the Peace Council was formed that was composed of the Minister of Justice, the Supreme Court Judge and the Chief Judge of the Territorial Court. The Executive Secretary was a native person who was a justice of the peace. The Council was responsible for the classification, appointment, and supervision of Yukon justices of the peace. Today, this body is called the Judicial Council and includes the following members, Chief Judge of Supreme Court, Chief Judge of Territorial Court, President of Yukon Law Society, President of

Justice of the Peace Association, one lawyer and two other members appointed by the Minister of Justice.

The utilization of justices of the peace in the Yukon Territory, however, dates back to 1887, the days of the Gold Rush (Ogilvie, 1913:261). During this time, the Commissioner of Police, William Ogilvie, assumed the duties of justice of the peace, although as the following comments of the Commissioner suggest, this additional role of the Commissioner of Police was quite foreign. According to Ogilvie:

> I knew little about it as a lawyer, and was willing to admit it. Mr. Fawcett was also a Commissioner of Police, as was Dr. Wills, Surgeon to the Mounted Police, and as both of these gentlemen were in town I reasoned that together we were as strong as six justices of the peace, and six husky magistrates, I thought, ought to be as strong as a judge, and so we should try the case.[1]

In the case he was referring to a man owed $152.00 for a hard winter's work and he was seeking payment from his employer who refused to pay him. Ogilvie, Fawcett and Wills decided to try the case with as much formality as possible. Ogilvie (1913) admitted that he lacked the experience as a justice, but used all the legal lore he could think of to make the procedures as formal as possible.

While the R.C.M.P. do not take on the role as justices of the peace today, they do play a major role in the Justice of the Peace Court, especially in those communities outside Whitehorse. For many justices of the peace, the R.C.M.P. is the only link to the criminal justice system in the community. Thus, the R.C.M.P. provide assistance with legal questions and procedures that the

justice of the peace may have while conducting court matters. The police also assist with the paperwork that accumulates during the court proceedings.

The total number of justices of the peace in the Yukon is constantly shifting. This number tends to vary between 39 and 45, the average number being 40. This number, though, does not indicate the number of justices of the peace who are actually conducting court matters, which was eleven. Most of those who are active in court are primarily senior justices, several having been justices of the peace for ten years, or more.[2]

Each community in the Yukon Territory have at least two justices, some have four or five with Whitehorse having as many as 11 justices of the peace. As will be discussed, there are various levels of authorization or power of justices which will determine their duties.

In his speech to the Justice of the Peace Training Seminar in Whitehorse (1983), Mr. Justice H.C.B. Maddison, of the Supreme Court of the Yukon, stated that the justice of the peace in the Yukon was in a unique position to understand the community and the problems within the community.

This role, however, was not without its pressures and conflicts. Justice Maddision (1983:3) noted, that by the fact justices of the peace are seen as "leading citizens", their behavior is expected to be beyond reproach and that justices of the peace should avoid offending any laws. The duty of the

justice of the peace was seen to maintain and strengthen public confidence in the courts and the judiciary, and in doing so, the justice of the peace had to be discrete in associations with the police (Maddison, 1983:5). This, of course, may be a difficult task for those justices who reside in the smaller communities where the R.C.M.P. is the only criminal justice agent in the community and may serve as a source of advice for the justice of the peace.

Justice Maddison (1983) also noted that knowledge and understanding of community problems was of great value to the justices. As was discussed earlier, this understanding may be an important ingredient in the development and implementation of a community justice program, and will be an issue that will be discussed later in this chapter with respect to the perceived role of the justice of the peace in the community and in terms of sentencing by justices of the peace.

In addition to the role of the justices of the peace and their sentencing, various aspects of the justice of the peace program in the Yukon Territory will be presented in this chapter. These will include, the recruitment, duties, training and remuneration of the justices of the peace. Following a presentation of these findings, the lay justice of the peace program in the Yukon Territory will be discussed and analyzed in light of the various issues and questions that were raised in previous chapters, in terms of the development and implementation of community-based justice programs.

Methodology

As noted, the major objective of the study was to provide a comprehensive survey of the literature that discusses many of the issues relevant to the development, implementation, and delivery of community-based justice programs to native and northern communities. This inquiry thus far has discussed various types of community-based justice programs, including programs in the Yukon Territory. The focus will now turn to an analysis of the lay-justice of the peace program in the Yukon Territory. The inquiry into this program took place during the summer months of 1984 and 1985.[3]

Material on the justice of the peace program was gathered from a variety of sources. This included materials available from the Territorial Court Registry in Whitehorse, interviews with justices of the peace and various criminal justice agents, such as Territorial Court judges, lawyers, native courtworkers, police officers and probation officers, reviewing Justice of the Peace Court dockets, a questionnaire distributed to the justices of the peace, and observations of the Justice of the Peace Court.

Additional information was obtained from the public library in Whitehorse, Yukon Archives, the R.C.M.P. head office in Whitehorse, the Yukon Law Library, Yukon Territorial Government Reports, Yukon Native Courtworkers, Yukon Department of Justice, Probation Services, the Land Claims Secretariat of the Yukon

Government, the Council of Yukon Indians, and the local newspapers.

The interviews that were conducted to obtain information took place in a variety of locations including hallways, offices, restaurants, and courtrooms, depending on availability of the individuals. In many ways, the criminal justice system in the Yukon, specifically the courts, is similar to that of the urban court system because there are long periods of waiting for court to begin, and in-between cases, which allows for information exchanges and discussions to take place in hallways and court interview rooms. Such was the case with the discussions that took place with police officers, lawyers, probation officers, and native courtworkers. Furthermore, it was often the case that the researcher was able to talk to the same individuals several times over the period of a few months in the Yukon in 1984 and 1985. These individuals contributed a great deal of information on the delivery of justice services in the Yukon.

In addition to conducting open-ended interviews, a questionnaire was distributed to all the justices of the peace in the Yukon (see Appendix A). As noted earlier, only approximately 11 justices of the total of 40 justices of the peace in the Yukon were active in the courts. Others were on call, while several had limited experience in court and were no longer active. The questionnaire response rate was 15, and included both responses from active and inactive justices of the

peace. Due to this low response rate it is with extreme caution that these results are to be utilized although their importance will be used to illustrate issues that were raised.[4] Due to this low response rate, follow-up discussions took place with half the respondents in addition to discussions with individuals who had been involved with the justice of the peace program since its inception and individuals who worked within the justice system. This included the first Executive Secretary of the Justice of the Peace Council who provided information on the implementation of the justice of the peace program and native involvement in the program. While the response rate is low, the researcher does have confidence in terms of the issues which the findings raise and their applicability to all the Yukon in terms of the Justice of the Peace Program. Furthermore, while this low rate of response does pose some concern empirically in terms of the generalizations which can be made to all the justices of the peace in the Yukon, the follow-up interviews and observations did provide additional valuable information. As stated, the researcher found that it was the issues which the respondents raised which warranted attention in terms of their contribution to the study of community-based justice programs.

In addition to the observations and interviews conducted in Whitehorse, visits were made to various communities outside Whitehorse. This included observing circuit court visits to the communities of Watson Lake and Carcross. This gave the author the opportunity to observe the Justice of the Peace Court and the circuit court and to speak with local justices of the peace.

This information was beneficial not only in terms of providing insights into the communities but also providing follow-up information to the questionnaires.

Visits were also made to Dawson City, Haines Junction, Carmacks, Pelly Crossing, Mayo, and Teslin. Many of these communities do not hold a regular Justice of the Peace Court, rather only if a matter arises that must be dealt with immediately. It is often the case that the Justice of the Peace Court will adjourn for the next circuit court visit to the community. This will also occur if the accused requests a lawyer, all of whom are based in Whitehorse. Furthermore, two justices of the peace in Whitehorse will make Justice of the Peace Court circuit trips to communities outside Whitehorse where there are no senior justices of the peace living in the community who can preside over court matters. Examples are Carcross and Carmacks.

As stated earlier, observations were made of the Justice of the Peace Court in Whitehorse as well as on circuit court trips to other communities. Observing the proceedings of the Justice of the Peace Court gave further insight into the types of cases which the justice of the peace will deal with, the sentences which are given out, and the overall dynamics of the Justice of the Peace Court.[5] All of this information combined to provide further insights into the justice of the peace program.

One of the most important findings that the researcher encountered in terms of collecting information in the Yukon

Territory was the fact that as she became familiar with the justice system in the Yukon, it became apparent that there was a core group of individuals who are dedicated to developing and implementing the various programs operating in the Yukon Territory. For example, one of the senior justices of the peace in Whitehorse is also the only Family Mediator, one of the Small Debts Mediators, and is also the Chairperson of the Yukon Public Legal Education Association. One of the native courtworkers is also the Chairperson of the Diversion Committee besides being on the Board of the Yukon Public Legal Education Association. These inter-relationships will be discussed later for they have important implications in terms of the development and implementation of community-based justice programs. For example, if a local justice of the peace in a small community may be asked in the future to perform mediation services. It will be important to discuss the implications of these multiple roles and their potential conflict.

As stated, this analysis of the justice of the peace program will focus on a variety of aspects of the program. This will begin with a discussion of the perceived role of the justice of the peace in the Yukon Territory.

Role of the Justice of the Peace

The role of the justice of the peace, as perceived by Yukon justices of the peace, seems to vary. In response to a question included in the questionnaire concerning their role, justices

who responded from both Whitehorse and outside communities stated the justice of the peace can be a "paper signer", a "by-law enforcer", a "protector of rights of society and the accused on an equal basis", a "peacemaker", and an "impartial quasi-legal person somewhat familiar with the legal system and very knowledgeable with the community and resources".

These responses seem to imply that the justice of the peace could be seen as a key community model. While the responses to the questionnaire may reflect to some degree the level of authority that each respondent may have as a justice, they all seem to emphasize that the justice of the peace is a person who could assist with community problems. This was reflected in such statements as the justice of the peace being, "...a person able to relate to the community and able to make judgments with fairness"; or, as one justice of the peace from outside Whitehorse stated in the questionnaire: "...the person in the community who can emphasize to the community that there is a problem in a certain area".

The justice of the peace was, thus, seen as someone who must not be intimidated, someone who would make a good common sense decision in court. As another justice of the peace stated, their role was: "...to see that justice is done and is <u>seen</u> to be done in the community, plus the role of being aware of community problems".

It is interesting to note that this point was substantiated in a discussion with an ex-magistrate who was also a lawyer in

Whitehorse. He was asked what he thought was important in the role of the justice of the peace. He felt that the use of common sense in decision-making was fundamental to their role in the community.[6] It is also interesting to note that the responses of the justices to the above question indicates that the justices are concerned about responding to the needs of the community, It was not indicated, however, whether the justices felt that they were better able to respond to the needs of the community than other officials in the criminal justice system. One could speculate though, that because the justice of the peace was one of the only contacts that many individuals may have with the criminal justice system, there would be a certain amount of responsibility in terms of the justice of the peace making decisions with respect to the welfare of the individual and the community as a whole. Furthermore, over half the respondents to the questionnaires indicated that the relationship between the Justice of the Peace Court and the social service agencies in their communities was poor. As indicated earlier, this may be due to the fact that the majority of social services are based in Whitehorse.

The implications of this relationship between the justice of the peace and the formal criminal justice system in terms of meeting the needs of the community will be discussed later, as this is an important issue to address in terms of the role of a community-based justice program.

The role of the justice of the peace is not without its pressures and difficulties. In response to a question, included in the questionnaire, with respect to the sources of difficulties a justice of the peace may experience in their work, respondents noted that the following were examples of such problems:

- too much paperwork;
- lack of legal knowledge and training for justices of the peace;
- the lack of understanding by the accused of the court proceedings; and
- alcohol-related problems in the community was indicated by 12 of the 15 respondents as being a problem they encountered in their work.

In a follow-up discussion with justices of the peace in terms of the problems they encountered, there were some interesting findings. Two justices of the peace, who happened to be women, stated that being a female justice of the peace proved its difficulties for them in terms of what they felt was a "sexist" justice system, in that they felt women were not given as many opportunities as men to be active justices of the peace. In addition, one of these females was native Indian, and she stated that she felt the pressure of being both native and a woman. Furthermore, one justice of the peace stated that:

> The justice of the peace faces a role conflict in that they are expected to be justices of the peace all the time when they only sit part-time on the bench. Their public image is at stake here, and how to balance the justice of the peace role versus the lay person role is

a difficult one.[7]

Another interesting finding was that all the questionnaire respondents felt that robes worn by justices of the peace in court were important in terms of giving respect to their role. As a justice of the peace in Whitehorse stated in a follow-up discussion concerning this question:

> The importance of the justice of the peace role in the community was enhanced by the introduction of robes to be worn by the justice of the peace whenever they are in court.[8]

This is an interesting perception. One would speculate that the fact that a justice of the peace is from the community they would have such respect. Furthermore, this is interesting in the sense of whether or not the justice of the peace program is to be considered an alternative to, or extension of, the formal criminal justice system. One has to ask if it can be an alternative if those individuals who are involved in the program wear similar garments to individuals who work in the formal system? On the other hand is the garment relevant in terms of the kind of community-based service that these individuals are providing for their community. This issue will be important to address and will be returned to later in the thesis.

Recruitment, Appointment and Duties of Justices of the Peace in the Yukon Territory

Justices of the peace in the Yukon Territory are recruited through various procedures. Historically, the R.C.M.P. recruited

the justices (Ontario Native Council on Justice, 1982). Today, this process has been formalized to some extent and recruitment is a constant process. Justices appear to be recruited in several ways: through senior justices of the peace, who reside in the communities, by the local R.C.M.P., through a contact in the criminal justice system; by a judge, by a justice of the peace, through community members, and through the request of someone who is interested.

According to the Chief Judge of the Territorial Court (1983:2), the characteristics that are looked for when recruiting justices of the peace may include the following:

> Good character, a wealth of common sense, a well-established notion of fairness, the ability to focus on important facts, and the precious, rare capacity to impartially evaluate the merits of a problem to reach a carefully considered decision.

It is interesting to note that several of these qualities are similar to the response of the justices of the peace with respect to their perceived role, specifically the notions of common sense and fairness in decision-making.

As it stands, an individual who is interested in being trained as a justice of the peace is able to come forth to the Judicial Council and express their desire to be trained. At other times, they may be recommended by one of the above noted sources of referral. As noted, the community itself can recommend a particular individual who may be a leader in the community and who is well respected by community members. In discussions with two senior justices of the peace in Whitehorse,

one of whom is directly involved in the recruitment of new justices of the peace, the issue arose that in those circumstances where an individual is referred by the community it may be the case that this individual may not necessarily be a suitable justice of the peace, in the eyes of the Judicial Council. There may be other individuals in the community who, while they have not been directly recommended by the community, may have qualities which are seen as important for a justice of the peace. Furthermore, since there is limited supervision of their work and no evaluation of the Justice of the Peace Program at the present time, it becomes difficult to assess the quality of the work of the justices of the peace.

Since 1985, each justice of the peace received a Letter of Authorization from the Chief Judge and the Judicial Council setting out in detail the specific responsibilities that each justice of the peace is authorized to carry out (see Appendix B). This appointment has also been approved by the Yukon Territorial Government. Accordingly, the specific responsibilities of each justice of the peace can be upgraded and downgraded in keeping with their level of training, experience and skill. This system of authorization, according to the Chief Judge (1983), enables a more exacting application of the following established policies.

1. Justices of the Peace carry out a level of responsibility equal to their level of training and skills.
2. Failure to complete an annual three-day workshop or its equivalent results in a reduction of these levels of responsibilites.

3. Justices of the Peace are not authorized to assume responsibilities that the senior local justice of the peace or Chief Judge feel they are not capable of assuming.
4. No justice of the peace is pushed beyond the level of responsibility that they feel competent to assume.

The justice of the peace program in the Yukon is based on a three level system: 1) a justice of the peace 1, being the lowest on the scale with limited powers; 2) a justice of the peace 3 is the highest on the scale with increased status; and 3) a justice of the peace 2 lies in between. Specifically, a justice of the peace 1 has the authority to conduct such matters as receiving documents from the R.C.M.P. on certain accuseds that need to be signed; issuing search warrants, and conducting wedding ceremonies. Also, a justice of the peace 1 can complete paperwork arising from a circuit court visit. A justice of the peace 2 has the authority to conduct the above noted proceedings, and can also, sentence upon a guilty plea that includes a fine not exceeding $500.00, to incarcerate not in excess of 15 days and to conduct uncontested bail hearings. In comparison, a justice of the peace 3 has the power to conduct all of the above and has also the authority to sentence on any Territorial Act, any summary Federal Act offence where the Crown does not seek a fine in excess of $2,000.00, or a jail term not in excess of three months, such as impaired driving or assault, and any by-law. A justice of the peace 3 may also conduct certain family and juvenile matters, although most of these matters are dealt with by a Territorial Court Judge.

Thus, different functions performed by a justice of the peace in the Yukon as outlined in the Justice of the Peace Manual (1983) include the following:

1. swearing informations;
2. issuing search warrants;
3. show cause hearings;
4. taking elections by the accused whether or not the matter is to be heard before a judge, with or without a jury, or by the Supreme Court, with or without a jury;
5. hearing a trial for less serious matters;
6. sentencing (e.g., of guilty pleas);
7. hearing civil matters; and
8. hearing juvenile matters.

Jurisdiction is the power of the justice of the peace to hear a matter or to take action with respect to matters brought before them. The rules of jurisdiction establish the conditions that allow the justice of the peace to act and to maintain the power to act. This jurisdiction is determine by statute and, for every case, a justice of the peace must ensure that they have the proper jurisdiction to hear the case. For example, there are certain offences that are not within the jurisdiction of the justice of the peace. If a justice of the peace does not want to hear a certain matter, she/he may adjourn the matter to another justice of the peace, or to the circuit court. This may occur if the accused is a relative or personal friend. Examples are those

cases in which there is any reason to suspect that justice will not be done, if the justice of the peace is aware of the facts of the offence, if the offence involves the justice of the peace, or someone she/he knows, and if the matter involves a complex legal argument that the justice of the peace feels ought to be heard by a judge. Several cases were observed in the Justice of the Peace Court in Whitehorse in which the justice of the peace simply adjourned a matter to the Territorial Court due to the legal complexities involved.

In many communities, the justice of the peace will determine when and how often they hold court, depending on the number of cases that they have. In Whitehorse, Justice of the Peace Court is held regularly, on Mondays and Thursdays, to deal with by-law matters, docket court, setting of trial dates, show cause hearings, and other such matters. Sentencing of guilty pleas also takes place, that could involve charges for impaired driving offences, assault, break and enters, and shoplifting. If there is an unrepresented accused, the justice of the peace will either adjourn the matter until Legal Aid supplies the accused with a lawyer, if they qualified, or the matter may be adjourned for a few moments so that the accused could consult with the duty counsel or a native courtworker to obtain advice. It is important to note that the Justice of the Peace Court proceedings in Whitehorse are, to a large degree, formal in nature and similar to the type of court proceedings one would witness in the Territorial Court in Whitehorse. These proceedings, however, vary depending on the court facilities of

the community and the legal services available. As noted, many communities do not have court facilities, court reporters and clerks, or native courtworkers and legal services.

While the Justice of the Peace Court may be held regularly in Whitehorse, this is not necessarily the case in the other communities. While some communities such as Watson Lake may hold Justice of the Court once weekly and Dawson City bi-weekly, other communities may only hold court when there is a need thus one reason for the low number of active justices of the peace. It is often the case that matters will be adjourned over to the next circuit court visit to the community. Cases may also be adjourned because the accused requests a lawyer, who must come from Whitehorse. The Justice of the Peace Court in communities outside Whitehorse may not have a court reporter, or a court clerk, thus, the justice of the peace may have to keep a record of the proceedings. This means that there may be an abundance of paperwork for the justice of the peace to complete.

One of the more critical issues that was raised with respect to the recruitment of justices of the peace in the Yukon is the need to recruit more native justices of the peace. This is very important due to the fact that there are a large number of native people appearing before the courts. As one justice of the peace noted:

> There is a high recidivism rate, especially for natives, and a large number of fine defaults, with alcohol playing a predominant role in much of the crime.

In addition, the researcher was told by a native justice of the

peace, "There is a need for increased recruitment of natives to take care of their own".

One of the issues highlighted throughout the discussion of justice of the peace recruitment and appointment, is that it raises interesting questions as to the Justice of the Peace Program in the Yukon being an extension of the formal criminal justice system. It is significant, for example, that the recruitment and appointment of justices of the peace do not necessarily come from the communities, and that the powers of a justice of the peace are similar to those of agents of the existing criminal justice system. This raises the issue of whether the justices of the peace are meeting the needs of the community or the needs of the formal criminal justice system? If a program is to be "community-based", it would seem to a certain extent that it should be reflective of the needs of the community. On the other hand one could speculate that the justice of the peace by using community members is providing a service to the community which would meet the criminal justice needs of the community in trying to deal with crime problems. These issues will be returned to in the conclusion of this thesis.

Training of Justices of the Peace in the Yukon Territory

Training of the justices of the peace in the Yukon Territory is provided through a variety of mechanisms. There is on-the-job training, assistance provided by judges, training by lawyers and

senior justices of the peace, and conferences. These conferences are usually held twice a year, lasting two or three days. The conferences provide training for new justices as well as providing experienced justices with new legal information and materials. As of 1985, one conference was usually held for all the justices, another for each level of authority. Due to low attendance, the justices of the peace levels 2 and 3 may often meet together, especially if there are several candidates within the group of the justices of the peace level 2, who will eventually be given the status of a justice of the peace level 3. According to a senior justice of the peace in Whitehorse, the training itself is "practicum-oriented", normally lasting approximately 16 hours. The 16 hour program consists of two hours theory and 14 hours involve practical exercises such as mock trials, videos and relevant scenarios. The judges may provide the training for the larger conferences while lawyers will assist with the smaller groups.

Throughout the conferences, the justices will attend mini-courses on various court procedures and law-related matters. These may include courses on warrants, the role of the justice of the peace, the principles of sentencing, and the responsibilities of a justice of the peace in the community. They may also attend workshops on mediation and diversion.

Training is also provided by the judges when they are on circuit court visits to the various communities. For example, the practice of substituting justices of the peace for court

clerks during the court proceedings provides a mechanism for the justices of the peace to learn more about court procedures. The judges are also available to provide advice to the justices of the peace on any matters, which they may question. As noted earlier, senior justices from Whitehorse may travel to certain communities to assist local justices of the peace with questions or problems they may be experiencing. Such assistance could be extended to providing follow-up training to the conferences that the justices of the peace must attend.

According to the justices of the peace who responded to the questionnaire, there was no consistency in the type of training received; nor any follow-up to analyze if the training received was sufficient. A formalized training program seems to be needed, perhaps in the form of a course that would be offered through the local college. The Yukon Public Legal Education Association has expressed considerable interest in developing and implementing such a course in cooperation with the college. A course could be used not only for justices of the peace, but also for training mediators, diversion committee members, and native courtworkers. This would be an intense course, and would include a variety of training techniques, such as role-playing, workshops, moot court, and materials on the criminal justice system. Tests could be conducted that would be included to review the knowledge of experienced justices of the peace. This in turn could provide a method of evaluation. This is badly needed. As one senior justice of the peace noted to the researcher during a discussion on the issues raised concerning

recruitment and training: "It is very hard to get rid of a justice of the peace once they are appointed, some feel it is a position for life, an honorary position".

The amount of legal knowledge which is included within the training of the justices of the peace seems to be a debatable issue. While, on the one hand certain aspects of law and law-related matters are important for the justice of the peace to know, there is a fair amount of law that a justice of the peace will never have to deal with in court. It may be both beyond their jurisdiction and authority. Nevertheless, the lack of certain facts of law, or rules of evidence, may prove to be a hindrance. When the researcher asked a sample of lawyers who had matters brought before the Justice of the Peace Court in Whitehorse, what they thought was suitable in terms of the legal knowledge a justice of the peace should know, it was indicated by these lawyers that it was very difficult to find a medium point as to how much law the justices should be trained to know.[9] If the justice has a limited amount of legal knowledge, it may make it difficult for a lawyer to raise a particular issue concerning a fact, or rule of law. One could speculate though, if they have too much legal knowledge, they may no longer be considered a community-based justice program, rather an extension of the formal criminal justice system.

What seemed to be the method used to cope with this problem was the justice of the peace adjourning a matter for a few minutes while he/she consulted the appropriate reference or

discussed the matter with a judge. One lawyer indicated that to assist a justice of the peace, lawyers could take the time to explain a certain fact of law or to explain a particular concept to the justice of the peace.[10] While this may be the preferred method in Whitehorse where resources are available, it may be difficult for the justices who reside in the communities outside Whitehorse where there is a lack of resources.

The reasoning behind the lack of legal knowledge training for the justices of the peace seems in part reflective of the philosophy of the program: justices of the peace should utilize their common sense rather than legal knowledge when they conduct court matters. As the Chief Judge of the Territorial Court (1983:5) stated: "...the primary working tools of the Justice of the Peace Court are common sense and fairness". This sentiment was agreed upon by those justices who responded to the questionnaire. Two thirds of the respondents agreed with the statement that justices of the peace should utilize their common sense rather than legal knowlege in their role as a justice of the peace. One could speculate that this, in addition to the extensive knowledge of the community that justice of the peace would have, are important qualities of the program in terms of it being based within the community and encouraging community participation.

There are several recommendations to be made with respect to the training of the justices of the peace, the first of which, as noted earlier, is the importance of consistency in training.

This would include having a required course, having lawyers as tutors, having senior justices of the peace travel to the local communities to provide follow-up training, and methods of evaluation and supervision.

As noted, there is also a need to recruit more native people to be trained justices of the peace. This would be in addition to cross-cultural training for all justices of the peace. As noted by Bill (1984:21) many of the individuals coming before the courts in the Yukon are native Indian, and there are few native justices of the peace proportionate to these numbers. There needs to be a better understanding and awareness of the needs of the native people, as well as a full understanding of the differences between the cultures because most of the communities in the Yukon have native and non-native populations.

Native input is needed in terms of any further development of the justice of the peace program. If there is no such input the justice of the peace program in the Yukon Territory may be perceived by native members of the communities as a "white" community-based justice program that is not necessarily meeting the needs of the native members of the community.

An important component of the training of the justices of the peace is the amount of training that is provided to the justices who live in communities outside Whitehorse. Rather than the majority of training being provided in Whitehorse, it is very important that training occur in the community where the trainee resides. The court facilities and services available in

Whitehorse are very different compared to the facilities and services available in the majority of communities in the Yukon. It would seem the appropriate setting to train community justices of the peace would be in the setting where he/she would be holding court. If a program is to be "community-based", it would seem appropriate that the training be reflective of this.

It has been suggested that the Yukon Public Legal Education Association could provide assistance with the training of justices who live in communities outside Whitehorse by coordinating local workshops and mini-conferences for the justices who reside in the community. By using this method of training, justices would receive the type of training reflective of the facilities and resources that they have to work. Training should be provided on a regular basis, so that the local justices of the peace receive more supervision and feedback to meet their individual training requirements.

As noted earlier, one of the most important findings of this inquiry was the low number of active justices of the peace who were actually active in terms of conducting court matters. This is not due to the small number of individuals who are justices of the peace. As previously noted, recruitment justices of the peace is a continuous activity. One of the problems seems to be that there are so few justices who have the authority and jurisdiction to deal with the various matters that come before their courts.

A resolution to this problem, which was suggested to the researcher, would involve a recategorization of the status of the justices of the peace according to the amount of training they had received. Instead of having only three levels of authority, justices of the peace would have their authority increased according to the training modules that they had completed. The more modules completed, the more authority the justice of the peace would have. Such a method of training could provide the consistency in training that is needed, and would enable those justices who wished, to have their authority increased to be able to do so without possibly having to wait years for the appointment. Such modules could also be updated and revised accordingly and could be available for distribution to those justices who reside outside Whitehorse.[11]

While the above recommendations with respect to the training of the justices of the peace may seem bureaucratic in nature, they are important in terms of the need to increase the number of justices of the peace in the Yukon who are active. This is especially true for the communities outside Whitehorse. A dilemma arises, however, as to how bureaucratic such a program may become in terms of the recruitment, training, and supervision, and the legal knowledge and procedural knowledge that they should have if their program is community-based and responsive to the needs of the community. What may be more important, however, is the lack of training consistency and follow-up, the lack of cross-cultural training, and the lack of community input in terms of overall effectiveness of the program

from an operational level. If a priority of a program such as the justice of the peace program is to respond to the needs of the community and to incorporate community input at the operation level, then such recommendations concerning community-based training would seem to be necessary for the continued operation of the program. This would begin with the necessity of increasing the number of individuals who are active as justices of the peace in the communities. For at the present they seem to be an under-utilized resource. In addition, this would mean providing the community justices of the peace with the resources needed to perform their duties, and providing community members the opportunity to devise their own solutions to problems with the community such as through mediation.

Remuneration

The remuneration received by justices of the peace in the Yukon Territory varies considerably, depending both on the status and length of time as a justice of the peace. On the basis of responses to the questionnaire in 1984, there is a sitting fee for the first hour of $25.00, and $20.00 for each hour following. An honorarium is also received, this also depending on the status of the particular justice and this varies from $200.00 to $400.00. The payment of this varies, recorded monthly or yearly, depending on how much court time the justice of the peace has. At least one third of the respondents noted that the lack of proper remuneration was a source of dissatisfaction to them in their role as a justice of the peace.

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In a follow-up discussion concerning the question of remuneration, a justice of the peace in Whitehorse stated that remuneration needed to be increased to make the time spent by the justices, in performing their duties, more worthwhile.[12] This is no doubt true with respect to the large amounts of paperwork with which a justice has to cope. There is some funding available to pay for the expenses incurred by justices of the peace when they travel to Whitehorse for training conferences and for the senior justices of the peace who are involved in the training programs, but little funding seems to be available to assist the justices of the peace with their duties.

It was also noted by this justice of the peace that by having increased remuneration the justices of the peace could be asked to provide additional services. For example, assisting in mediations, recruiting new justices, and assisting with the development of training programs and legal education programs for community members.[13] By having a monetary reward, it would be hoped that justices of the peace would become involved in such initiatives rather than devoting even more volunteer hours of their time.

It should be noted, though, that increased remuneration may not increase the effectiveness of a program on the operational level. If the justices of the peace are to be seen as an extension of the formal criminal justice system then,

remuneration is certainly an issue. If, however, the justice of the peace program is based on the premise of being community-based, incorporating as many community members as possible in its implementation, one has to question the rationale for paying people to perform a community service. One can understand the need for a monetary reward if an individual is putting a lot of volunteer hours into their work. This is especially so if there is an ever abundance of paperwork. However, if this position in the community becomes a "career" in the criminal justice system, then the program does, indeed, become an extension of the criminal justice system. It would seem that the justice of the peace program in the Yukon Territory is moving towards this category.

Sentencing

An important function of the role of the justice of the peace is in the sentencing of offences. For the most part, the justices of the peace only sentence for guilty pleas for less serious offences, including summary convictions, territorial offences, and local by-laws. Those justices of the peace who have such a status were outlined in Appendix B. The fact, however, that a justice of the peace does have such powers tends to impose certain challenges for individuals who have never been in such a position of decision-making.

In the Justice of the Peace Manual (1983:J-2), the following factors are considered guidelines to assist the justices of the

peace in responding to challenges which are encountered in sentencing: common sense, equality before the law, the ability to be fair, acting without hatred or prejudice, considering all factors and the understanding that every case is important.

Noticeably absent from this list, is any reference to any form of "traditional" justice, such as incorporating traditional native values and customs in sentencing.[14] This is important to consider since, as noted, there are many native people coming before the Justice of the Peace Courts in the Yukon.

Included within the questionnaire distributed to the justices of the peace, was a question directed towards the importance of various factors when considering a particular disposition. The justices were requested to assign how important they felt particular factors were with respect to their sentencing. While it is important to note that the justices had various levels of experience and authority as justices, several important findings should be discussed.

All the respondents considered to be important, the age of the accused, prior record, seriousness of the offence, circumstances, deterrence of the offender and community, rehabilitation, recommendations by criminal justices agents, such as social workers and native courtworkers, and punishment. It was also interesting to note that the justices felt that consideration of the wishes of the family were also important, as well as restitution to the victim.

One of the most interesting findings was the responses concerning how important community knowledge and attitudes toward the offence were when considering a disposition. Ten justices of the peace considered this to be of moderate importance. In response to a question concerning how important community input is in relation to the decisions made in the Justice of the Peace Court, two thirds of the respondents stated that it was of importance. In response to the question how important is that the decisions made by the justice of the peace reflect the concerns and feelings of the community, 13 of the 15 respondents stated that it was of importance.

The notion that knowledge of the community and input from the community assists in sentencing considerations was also discussed by Bill (1984) in her analysis of the delivery of justice services in the Yukon. Bill (1984:3) notes:

> In some communities the Justice of the Reace Court is held in higher regard than the circuit court because of it's consistency and the fact that the justice of the peace is a member of the community.

This could be the result of the justice of the peace having more knowledge of community values and sentiments.

While this may or may not necessarily be true in a community as large as Whitehorse, in a community such as Watson Lake, it was stated by the probation officer that in her view:

> ...the justice of the peace does sentence more severely than the judge but at the same time the justice of the peace will attempt to rehabilitate the accused and will try to sentence according to the needs of the accused. This in part is due to the knowledge that the justice of the peace has of the community members who come before the courts.[15]

This probation officer felt that the justice of the peace sentenced severely for particular types of offences such as impaired driving that occurred quite frequently in this community.

In its study of the Justice of the Peace Program in the Yukon, the Ontario Native Council on Justice (1982) noted that there were sentencing disparities between justices of the peace and judges. This was reflected in the observation that justices of the peace level 2 handed down tougher sentences than the circuit court judges (Ontario Native Council on Justice, 1982). In an attempt to review the sentencing by the justices, they were requested to complete a sentencing digest, recording the reasons why they gave out particular sentences. As of 1984, this had not proven to be very successful.

One of the more interesting findings is the notion that the justices reflect the sentiments of the community in sentencing. One could speculate that community sentiments towards a particular offence become somewhat difficult to assess in those smaller communities where the members of the community have previous knowledge of the offender, the background of the offence, and other such circumstances influencing their reaction to a particular case. As one justice of the peace noted in the questionnaire: "...if the community perceives a particular individual as a threat to the community the justice is made aware of this sentiment".

It is interesting to add that while on a visit to a community outside Whitehorse, the researcher had the opportunity to talk to several community members who were waiting for court to begin. Of the people spoken with, over half indicated that they felt that the justice of the peace who presided over most of the matters in their community, did give out sentences harsher than the circuit court judges. When asked why this may be so, there was a consensus that such offences as impaired driving and assaults, which occurred quite frequently in their community, were perceived as serious by community members, and more harsher sentences were imposed in an attempt to deal with these problems. In reviewing the court dockets from the Justice of the Peace Court in Watson Lake, it was found that during the period March 3 to June 28, 1984, Justice of the Peace Court was held 10 times. Of all the charges brought before the justice of the peace, 42 of the total were impaired driving charges, while 11 were for assault charges.

It is difficult to state that such responses are representative of the whole community. However, they do raise an important issue. That is, how does the community perceives the justice of the peace. For example, is the justice of the peace seen as a "judge". This, it seems, depends on the size of the community and the relationship that the justice of the peace has with the community. As noted above, the majority of respondents to the questionnaire noted the importance of reflecting the concerns and feelings of the community in their sentencing. The issue in terms of the justice of the peace program being a

community-based program, is how the justice of the peace assesses the sentiments of the community members, taking into account the various groups within the community. For example, both native and non-native members of the community.

The types of dispositions a justice of the peace may impose depends, to a large extent, on the availability of services in the community. As stated, many communities do not have extensive social and alcohol services. Thus, there are few choices for referral. Whitehorse has an abundance of social services, alcohol and drug services, as well as legal services, mental health services, and services for battered women. In her observations of the services available in Yukon communities, Bill (1984) noted that there was a lack of social services from which to draw upon for sentencing alternatives to jail. She noted the high recidivism rate, especially for native Indians, specifically for young males with alcohol playing a predominant role in many of their crimes. There is an obvious need for the communities to take on a more responsible role in providing such services and alternatives. Kimmerly (1980:17) gave an example of such importance of community participation in sentencing. An offender was given a probation order which required him to trap outside the Old Crow townsite. In this case, the sentence of "banishment", was arrived at: "...after discussion with the chief and the band council", and was agreed to by the court (Kimmerly, 1980:17).

Community members themselves could provide alternatives for the justices to use. Examples might include adult diversion programs, or having para-legal services based in the communities to assist those accuseds who wish legal advice rather than appearing before the justice of the peace without a lawyer. In addition, having public legal education programs for the communities, that could be provided by the Yukon Public Legal Education Association, could increase the knowledge of community members with respect to law-related matters, and could facilitate community involvement in responding to the problems within the community.

Conclusion

As the above results indicate, the Justice of the Peace Program in the Yukon has both advantages and disadvantages. Several of these are important to note in relation to the findings of this study. In addition, a review of some of the recommendations cited as important by justices of the peace, with respect to the training, recruitment, jurisdiction and remuneration of justices of the peace now need to be highlighted.

Local input is one advantage for having a justice of the peace program. It is seen as crucial that local community members sit as justices of the peace and that they "impart" community values, concerns and needs into the criminal justice system. Of course, as suggested by the researcher's findings,

the difficulty arises as to which community group is the most outspoken in terms of needs and values, and how does a justice of the peace "impart" some values and not others without becoming involved in a conflict, especially if the program is to be "community-based".

Another advantage is the equality in the delivery of justice services (Stuart, 1983:1). This is vital in terms of the communities outside Whitehorse where the Justice of the Peace Court is the only court available and is, thus, provided with the task of ensuring the legal rights of the accused. A local justice of the peace is supposed to ensure that there is immediate access to the court, while affording the protection of prompt court responses to the crime (Stuart, 1983:1). As found, this may be difficult for those communities who do not have the advantages of resident lawyers and legal aid. The local justices of the peace may have to adjourn certain matters to the next circuit court visit so that individuals are able to receive legal services. This may delay a case for weeks at a time.

While the Justice of the Peace Court may enhance the quality of the delivery of legal services and reduces the cost of the delivery of legal services by reducing the length of time that the circuit court spends in the community, it is also true that communities do not have native courtworkers and lawyers to assist defendants who are coming before the courts. Adjourning matters to the next circuit court visit does not necessarily speed the response to the crime. While the use of justices of

the peace may be cost effective in comparison to paying the salaries of a judge, the justices seem to be under-utilized as a resource in many communities.

There were a variety of sources of satisfaction that those justices of the peace who responded to the questionnaire felt towards their role as a justice of the peace. Some of these included: performing weddings, involvement in training, helping the community, respect from the townspeople and giving a break to young offenders. In addition, being able to provide mediation services and "acting as an adviser" in their role, helping the community solve its problems and the feeling of providing societal service to the community were also seen as important in terms of the role of the justice of the peace.[16]

In addition to these sources of satisfaction, there were also major sources of dissatisfaction expressed by the justices of the peace with respect to their role in the community. These included: lack of legal training, lack of proper remuneration, personal life disruption, disorganization of system and time delays, the lack of native courtworkers and resources for the accused and the community to use and the lack of understanding by the accused of the court procedures. One justice of the peace added that not being able to sit was a major source of dissatisfaction. On the other hand one active justice of the peace stated in the questionnaire that their job: "limited one's community involvements and activities that one enjoyed prior to appointment".

It is interesting to note that in follow-up discussions with justices of the peace concerning these sources of dissatisfaction two justices of the peace in Whitehorse added that not having court duty was a source of dissatisfaction, to the point that they no longer wanted to be justices of the peace. In a conversation with a justice of the peace from Old Crow, who had had limited experience on the bench, she stated that not having the authority to deal with certain matters coming before the court was frustrating to her.

Recommendations were suggested by the respondents which included the need for more consistent training, including training in home communities, an increase in salary, communication and mediation skills, territorial jurisdiction (e.g., increased authority to be able to deal with more serious matters), and more native participation in terms of having more native justices of the peace.

One of the most interesting recommendations proposed was directed towards the recruitment of individuals to become justices of the peace. This particular justice felt that there was a need for: "...community board approval of those recruited to be justices of the peace". This, in terms the justice of the peace program being a "community-based" program, has serious implications. It has been discussed that one of the most important components of a community-based program is the need for community involvement in the development and implementation of the program itself. In terms of the justice of the peace

program, this would include community justices of the peace. While recommendations of the community are important in terms of recruiting justices of the peace in the Yukon, it is difficult to assess whether this is a priority in the present operation of the program.

One of the most important lessons learned from the earlier discussion of the qualities of community-based justice programs is the need for community input and participation in the actual development and implementation of such a program. In addition, there were the issues of accountability, autonomy, and relationship of the community to the formal criminal justice system, and the degree of formality of the program. After all, who is the program to be accountable? The community or the criminal justice system? How autonomous is the program to be in terms of the relationship to the formal justice system? Finally, one has to ask how reflective is this program of the needs and values of the community members? Is there a cross-representation of community members involved in the program? Is the program using its community members to the fullest extent?

On the basis of this inquiry as to whether or not the justice of the peace program in the Yukon Territory is a community-based justice program, it would seem that this program illustrates many complexities. These include the possibility of a program that had the intention of being community-based through the incorporation of community input, becoming a formalized extension of the criminal justice system or the

government in terms of the selection process of justices of the peace.

Rather than being an alternative to the criminal justice system, the justice of the peace program in the Yukon could be viewed as an extension of the formal court system that was designed to improve justice delivery at the community level incorporating community members as justices of the peace. While the program may be based within the community, its mandate, training, remuneration, authorization and supervision are provided, not by the community, but by the formal criminal justice system.

The concluding chapter will discuss the implications of these findings in terms of the relative effectiveness of a program that is providing a service to community members, while incorporating community participation in the delivery of justice services. It will discuss the findings regarding the issues which have been raised in this thesis with respect to the requirements of a community-based justice program and the complexities involved in the development and implementation of "community-based" programs . For example, if a program is not in the truest sense "community-based", should we preclude that the program will be ineffective in terms of not providing a service to the community, though it is not involving community members in the delivery of services, or responding to the needs and problems of the community? What if the community does not have the leadership, resources, or interests in developing

alternatives to the criminal justice system, but still desires an alternative to the circuit court system? In such communities the lay justice of the peace program (as an extension of the formal criminal justice system) may be the type of program that could provide the required services, while, at the same time, still being based in the community in an effort to improve the local delivery of justice services. This is an important issue. One cannot presume that every community has the resources and community development capabilities to be able to develop and implement a community justice program. As Gerber (1977:8) discusses, personal resources and the potential to develop are important community characteristics. It is feasible to extend this capability to the successful development of community-based justice programs.

NOTES

1. The law in early mining camps, whereby "justice" was usually dispenced with at the miners' meetings of complaints which were made to the local magistrates who were usually the police (Ogilvie, 1913:261).

2. Several justices of the peace are always "on call", and are available for signing warrants, informations, and conducting wedding ceremonies.

3. At no point did the researcher intend this study to be an evaluation of the "success" of the Justice of the Peace Program of the Yukon. Rather, this study is descriptive in nature, providing useful information on the complexities involved in the development and implementation of community justice programs. As a "southerner", the researcher did not feel it was her perogative to evaluate the program within the given time period.

4. It is also to be noted that the summer months in the Yukon is a time when individuals are on holidays. Thus it was difficult to contact many respondents.

5. Justice of the Peace Court in Whitehorse is held regularly each week on Mondays and Thursdays. Justices are also available to deal with any unexpected matters such as warrants or show cause hearings. The majority of court observations took place during the Summer of 1984, as did the distribution of the questionnaire. The Summer, 1985 was primarily devoted to exploring the various other community-based justice programs such as mediation and diversion and follow-up research on the justice of the peace program.

6. Interview with Roger Kimmerly, Lawyer, presently Minister of Justice, Government of Yukon, 6 July, 1984.

7. Follow-up discussion concerning responses to the questionnaire with Sande Copeland who at this time was a justice of the peace in Whitehorse, Yukon Territory, 15 June, 1984.

8. Interview with Bill Thomson, Justice of the Peace, Whitehorse, Yukon, 24 July, 1984.

9. A sample consisted of five lawyers who had extensive experience in the Justice of the Peace Court, (Thursday, June 21, 1984). Thursdays in Justice of the Peace Court in Whitehorse were usually set aside for sentencing.

10. Discussion with Lynn Gaudet, who at this period in time was

a lawyer who had been involved in the training of justices of the peace, and was concerned with needed improvements (un-recorded date), and is now Program Manager for the Yukon Public Legal Education Association and has recently been appointed as a member of the Judicial Council (November, 1985).

11. Ibid.

12. Interview with John Wright, Justice of the Peace, Whitehorse, Yukon, 24 July, 1984.

13. Ibid.

14. For further readings on the role of traditional justice, consult: Grant, Peter, "Role of Traditional Law in Contemporary Cases", Canada Legal Aid Bulletin, Special Issue, 5, 2-3. (April-July, 1982):107; Jefferson, Christie. Conquest by Law: A Betrayal of Justice, (unpublished manuscript); and Graburn, Nelson, H.H. "Eskimo Law in Light of Self and Group Interest", Law and Society, 4, 1 (August 1969):45.

15. Interview with Sharon Caouette, Probation Officer, Watson Lake, Yukon, 24 July, 1984.

16. A total of 11 of the 15 respondents answered 'Yes' to the question of whether or not they enjoyed their role as a justice of the peace in the Yukon.

CHAPTER VI

CONCLUSION

As stated in the introduction, the purpose of this thesis was to present the issues relevant to the development, implementation, and delivery of community-based justice programs to native and northern communities and to critically assess such programs. Examples were provided of such programs including an analysis of a specific program operating in the Yukon Territory, namely, the Justice of the Peace Program.

Throughout this discussion, it has become evident that the term "community" and "community-based" justice programs are very problematic, the concepts are not developed in the literature and are far from clear. For example, it has been noted that it is at times very difficult to perceive who exactly is the "community", and what the "community" needs are that a program is supposed to attempt to meet. Furthermore, who is to say what these needs are: the community or the formal criminal justice system?

In terms of the development of such programs for native and northern communities, it was noted that there are various difficulties encountered by such communities in terms of the delivery of justice services. For example, the lack of community input, and the need to implement programs that were adaptive to the needs of the communities which incorporate community members as participants.

This need for community input and programs adaptive to the needs of the community provides a foundation for the development and implementation of community-based justice programs. Through a discussion of several examples of such programs as mediation, community arbitration and diversion programs, it was evident that the key to the development and implementation of such programs is community participation, and direct involvement of community members in the development, operation, and administration of such programs.

Reviewing examples of community-based justice programs assisted to identify key policy issues to be considered in the developing community-based justice programs. Such issues included: the need for community participation and input in the development of a program, the need for sensitivity to the needs of the community; the inter-face between community-based initiatives and the existing criminal justice system; the need for a cross-representation of community members involved in the program; the need for clearly stated goals and objectives, as well as the need for accountability and evaluation. The issue of funding; and finally, the level of legal information and education available to community members in terms of the objectives and services available to them by the program need to be considered.

Through a presentation of the various programs operating in the Yukon Territory, specifically the Justice of the Peace Program, additional issues were raised illustrating further

complexities. A key issue raised was the fact that while a program may be based in a community, this does not necessarily preclude that the program is realistically a "community-based" justice program. The Justice of the Peace Program in the Yukon provided an example of a program seeming to be an extension of the formal criminal justice system which is designed to improve the delivery of justice services at the community level, while incorporating community members to provide this service. In addition, the process of how justices of the peace are appointed and given authority illustrated how closely tied a program can be to a government mandate.

The Justice of the Peace Program in the Yukon Territory illustrated how the criminal justice system can be involved in every aspect of a program, including the development of the program; the recruitment of individuals to provide the service; training; supervision; and funding. Such a close involvement with the formal criminal justice system could lead to a community-based program becoming a bureaucratic extension of the system with no community input whatsoever. This program also indicated that there is a need to incorporate community input into a program in terms of using community members to the fullest extent, and meeting the needs of native members of the community. This is particularly evident in the Yukon where there is a high proportion of native people coming before the courts (Bill, 1984).

One of the most important issues raised as a result of the analysis of the Justice of the Peace Program in the Yukon Territory was the question of whether a program, that is an extension of the criminal justice system can be relatively effective in encouraging community participation and support in the operation of the program and in meeting the needs of the community with respect to the delivery of justice services. To deal with these issues, it was important to understand many of the complexities described in the previous presentation of various types of community-based justice programs, especially the Justice of the Peace Program in the Yukon Territory. It was suggested that a program can meet the needs of the community providing it has community support and involves community members directly.

While keeping in mind these various issues and concerns, the following summary will focus on what are proposed to be various components of community development that can contribute to the development and implementation of community-based justice programs. These various components are important in terms of understanding the process of community problem solving that in turn, will affect the operation of a justice initiative which is based within the community. Furthermore, these components are important to review as a result of the findings of this study and the issues which have been raised in terms of developing community justice programs for native and northern communities specifically.

As discussed in Chapter I, Edwards and Jones (1976) have propose six components of a completed community action. While these components may not be directly related to justice programs *per se*, a review of these various components does indicate several issues that can be seen as important for the development of community-based justice programs. For example, the recognition of a need for action is the first component cited by Edwards and Jones (1976) as important. This factor focusses on the need for an incentive both for the initiation of action and for the drive to carry out the particular action to completion. This would imply that community members' participation and interest in the program would be vital for its existence and operation. This was seen as an important component of all the programs presented in terms of the delivery of various justice services.

Furthermore, as noted by Edwards and Jones (1976), this includes efforts made to obtain a convergence of interest among participating community members who have various dissatisfactions and who represent different groups within the community. A clear example of this was illustrated by the problems involved in the delivery of justice services to native and northern communities, especially with respect to native members of the communities and the need for more native justices of the peace in the Yukon in those communities where predominantly native people come before the courts.

Initiation of a particular course of action is the next component, one which must be taken by a particular group or combination of groups (Edwards and Jones, 1976). For example those who would initiate a particular community-based justice program would have to have knowledge of the community, the problems inherent in the community, and the various group interests which need to be taken into consideration. As indicated, this is an important component of the role of a justice of the peace.

The third component of community action is the study and diagnosis of the particular method of action (Edwards and Jones, 1976). In terms of the issues raised in this study this could include the nature of the community concerns, the availability of present and potential resources, the organizational components, the focus of power and the role of community members in relation to the particular problem. Here the importance of a community having the adequate resources and potential to develop is vital as indicated by Gerber (1977:8). In addition, the need for community involvement and participation has been seen throughout the previous examples of community-based justice initiatives as fundamental to this phase. This is evident in programs that were not only seen as alternatives to the criminal justice system, but those programs, such as the justice of the peace program, which is seen as an extension of the criminal justice system which are still based at the community level.

The selection of a goal or goals, and a plan of action is the fourth component suggested by Edwards and Jones (1976). With respect to a community justice program this would involve a decision-making process whereby various goals are suggested which incorporate community input, potential sources of conflict are identified, community acceptance is sought, methods to accomplish particular tasks are suggested, and desired and undesired consequences for the community are reviewed. These would seem to be very important considerations in the development and implementation of any community justice program, whether it be an alternative to, or extension of, the criminal justice system. This need for community acceptance and participation providing the foundation for the continued operation of any program.

Goal achievement is the fifth component of community action obtaining the resources and materials, as well as people, to work together to increase community involvement and participation towards a particular endeavor. Such goals, policies and planning of program objectives need to be clearly specified so that potential sources of conflict are identified in the early stages of the program's development. As evidenced by the examples provided earlier, this would include a clear definition of the relationship between the program, the community members, and the existing criminal justice system and government. Failing to do so can create conflicts which can possibly lead to the demise of the program, such as in the case of the High Level Diversion Program in Alberta. Conflicts may

also arise in terms of how bureaucratic a program may become if it is seen as an extension of the formal justice system, for example the problems that the Diversion Committee are having with the government-appointed Diversion Council

The final component of community action which Edwards and Jones (1976) see as important is the need for the institutionalization of the achieved goal. This infers that the goal is incorporated into the "normative and social structures of the community" in such a way that the program becomes an established, regularized "permanent" feature of community life (Edwards and Jones, 1976:158). Such acceptance relates to the degree the community will participate in, and use the services of a program.

As evidenced by the examples provided, including the Yukon Justice of the Peace Program, the need for financial resources to maintain the program, community support and interests, as well as feedback and evaluation in terms of the goals of the program, have been recommended as important to the program's continued operation. The existing Justice of the Peace Program in the Yukon Territory has also indicated the problem of alienating specific individuals from working within the program, such as the under-utilization of many justices of the peace. If a program sets out to encourage community interest and participation, and stresses such a goal within its mandate, then it should do so. As Chief Judge Stuart (1983:1) stated:

> Community involvement is the first and most effective defence against crime. Local Justices of the Peace are

> often instrumental in establishing other community justice related projects such as Diversion, community work, Juvenile Court Committees....

On the basis of these various components that are needed for community action, it would seem that community interest and participation is fundamental. This would be true for any type of justice program which is to operate at the community level, whether it be a complete alternative to the formal justice system, such as in the case of mediation, community arbitration, and diversion programs, or an extension of the system such as in the case of the justice of the peace program. In order to obtain such community interest and participation, the roles, actual or potential, of community members in relation to the program and the goals and the services it will provide, need to be clearly identified from the outset. Furthermore, the nature of community interest, concern and involvement must be defined. Questions have to be asked such as: is there a high degree of interest and will this interest carry through the initial inception of the program? On what basis can citizen participation be initiated, developed, mobilized, and utilized in relation to the goals and actual operation of the justice program? Finally, what control will the criminal justice system or government have over the administration and operation of the program? This could affect how acceptable the program may be to community members and whether or not the community needs are being met by the objectives of the program. This relates to the degree of control and input that the community may have.

With community interest and involvement, major reforms could be brought about in relation to the delivery of justice services to northern and native communities. Communities can assist the justice system through community involvement in justice programs which are based within the community.

In general, there is a need for northern and native communities to play a more active role in the delivery of justice services. The problems with the accessibility of the circuit court that visit the communities three or four times a year and the general unavailability of resources, places many communities at a disadvantaged position.

As this thesis has indicated, the alternative points in the direction of the community taking on a more responsible role to develop programs to meet its own criminal justice needs. This can be done with or without the assistance of the formal criminal justice system. Examples such as mediation, diversion, community arbitration and lay justice of the peace programs have indicated the complexities involved in the development and implementation of such programs, but more importantly they have indicated that such programs are feasible, and only so if there is community interest and participation, and a use of this interest and participation to its full potential.

At the very least, community involvement can stimulate meaningful participation in criminal justice and related community programs, and can also serve to educate the community in terms of law-related matters. Examples such as the Yukon

Public Legal Education Association illustrate this potential in terms of being able to provide the resources to the communities. Legal education and information as to the various programs and services available to community members can help to stimulate the necessary interest and participation of community members in the actual operation of the program.

The various community justice programs that have been discussed have served to illustrate the issues involved in the development of such initiatives. The analysis of the Justice of the Peace Program in the Yukon Territory raised even further complexities in terms of the relationship between a program and the justice system. Such issues and complexities do not, though, detract from the central argument that justice programs based within communities that encourage participation and interest of community members are a viable resource to be used, especially for native and northern communities where there is a need for such services. Such programs can decrease the workload of the formal justice system, can provide quick, immediate access to services such as dispute resolution alternatives, can be adaptive to the particular criminal justice needs of the community and will enable the community itself to take on a more responsible role in resolving its own problems. Community members are brought directly into the decision-making processes affecting their lives, their participation being vital to the program's existence.

Many of the issues that have been discussed in this thesis are important in terms of contributing to the complexities involved in the development, implementation, and operation of a justice program based at the community level. The Justice of the Peace Program in the Yukon provides a good example of a program which illustrating many of these issues. Such concerns as the inception of a program, recruiting community members to participate, the funding of the program, training, supervision, and evaluation, and the need to meet the various interests within the community were all illustrated by this program.

More importantly though, the Justices of the Peace Program indicated the importance of clearly defining the relationship between the community and the criminal justice system in terms of the actual operation of the program, and the extent to which community members will be utilized to provide the services required. It may be the case that a program will suffer because it does not receive government approval under which to operate, nor appropriate funding or resources. In addition, too much government control such as in the case of succumbing to a government mandate will further affect a program's operation, especially if such a mandate contradicts program objectives or philosophy.

Issues such as recruitment, training, funding, and evaluation, may be irrelevant if community interest and participation is not used to the fullest extent. If a goal of a program is to improve the delivery of justice service at the

local level by incorporating and using community participation and interest, then it should do just that. Failing to do so can lead to the demise of a program, or at the least, its continued operation with no effective change in terms of the delivery of justice services.

How to obtain community interest and participation is not necessarily an easy task. For some communities, there may be a lack of leadership, commitment, and general interest on the part of the community members to become active in the delivery of justice programs and services. This, however, does not detract from the importance of developing such leadership, recruiting community interest, and educating the community as to how they may become involved. This may inevitably be the task of the formal criminal justice system.

The point to be made, however, is that at the present time, northern and native communites are an under-utilized, and often a neglected, resource for potential justice programs and services. Since the evidence indicates that the present delivery of justice services to northern and native communities is insufficient and inadequate with respect to support services and programs for both the justice sytem and the community to use. The time has come for the community to take on a more responsible role and to participate in the delivery of justices services to its own members. While keeping in mind all the various policy issues and potential advantages and disadvantages of such programs, there is a strong argument for the increased

use of the community as a source of justice delivery. To ignore this resource is to under-estimate its potential in assisting the justice system to bring the administration of fair and equal justice services to northern and native communities.

APPENDICES

APPENDIX A

J.P. CODE : : :1: (1-3)
Court Location Code : : : : (4-6)

JUSTICE OF THE PEACE QUESTIONNAIRE

PART A: TRAINING AND APPOINTMENT OF JUSTICES OF THE PEACE

The following statements and questions relate to the training jurisdiction, and appointment of Justices of the Peace. This information, and the rest to follow, is completely anonymous. Please circle each appropriate number; or complete each question with the appropriate information.

1. What year were you appointed as a Justice of the Peace?
19: : : (7-8)

2. How were you recruited? _____
_____ : : (9)

3. Who provided your training? _____
_____ : : (10)

4. What kind of training did you complete prior to your appointment as a Justice of the Peace?
_____
_____ : : (11)

5. How satisfied are you with the training you received to become a Justice of the Peace?

Completely Satisfied	Generally Satisfied	Generally Dissatisfied	Completely Dissatisfied	
1	2	3	4	(12)

6. Do you feel that the present training for Justices of the Peace is satisfactory?

Completely Satisfactory	Generally Satisfactory	Generally Unsatisfactory	Completely Unsatisfactory	
1	2	3	4	(13)

7. Would you agree that is it important for a Justice of the Peace to utilize his/her common sense rather than legal knowledge in court?

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	(14)

8(a) Do you feel that a Justice of the Peace should wear a robe while conducting court?

Yes	No	No Opinion	
1	2	3	(15)

(b) If your answer is yes, briefly state why?

_____ (16)

9(a) As a Justice of the Peace what renumeration do you receive? (Amount in dollars)_____ (17-20)

(b) How often do you receive this renumeration?

per case	per day	per month	per year	don't know	
1	2	3	4	5	(21)

10. Would you agree that a course in law or criminal justice should be available for Justices of the Peace from a college or university through their Distance Education Program?

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	(22)

11. Briefly state what recommendations you would see as important for the recruitment, training, jurisdiction, and renumeration of Justices of the Peace.

_____ (23-24)

PART B. RELATIONSHIP WITH THE COMMUNITY AND CRIMINAL JUSTICE AGENCIES WITHIN THE COMMUNITY

The following section is concerned with the role of the Justice of the Peace in relation to various Criminal Justice Agents within the community, and with the community at large. Please circle each appropriate number when requested; or complete each question with the appropriate information.

12. How important is community input in relation to the decisions you make in the courtroom?

Very Important	Moderately Important	Low Importance	Not Important	No Opinion	
1	2	3	4	5	(25)

13. How important is it that the decisions made in the courtroom by the Justice of the Peace reflect the concerns and feelings of the community?

Very Important	Moderately Important	Low Importance	Not Important	No Opinion	
1	2	3	4	5	(26)

14. Alcohol-related problems are highly visible in your community.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	(27)

15. Drug-related problems are highly visible in your community.

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	(28)

16. Would you agree that a lot of knowledge about the community is detrimental for your role as a Justice of the Peace?

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree	Strongly Disagree	
1	2	3	4	5	6	((29)

17. Would you agree that a lot of knowledge about the community is helpful for your role as a Justice of the Peace?

Strongly Agree	Agree	Mildly Agree	Mildly Disagree	Disagree Disagree	Strongly Disagree	
1	2	3	4	5	6	(30)

18(a) Do you feel any pressure in your job as a Justice of the Peace from the community?

Yes	No	No Opinion	
1	2	3	(31)

(b) If answer is yes, briefly state why?_____

_____ : : (32-33)

_____

19(a) How would you characterize the relationship between the Justice of the Peace Court and the social service agencies in your community?

very poor	Poor	Adequate	Good	Very good	
1	2	3	4	5	(34)

(b) Briefly state the reason for your answer:_____

_____

_____ : : : (35-36)

20(a) How would you characterize the relationship between the police and the Justice(s) of the Peace in your community?

Very	Poor	Adequate	Good	Very	
1	2	3	4	5	(37)

20(b) Briefly state the reason for your answer._____

_____

_____

_____ : : : (38-39)

21. Briefly describe what you perceive to be the role of the Justice of the Peace in your community.

_____

_____

_____ : : : (40-41)

22. In your role as a J.P. you may encounter a variety of problems. How much difficulty do each of the following factors pose for you in your work? (Please circle appropriate number).

	Great Difficulty	Some Difficulty	Little Difficulty	No Difficulty	
Accuseds' lack of understanding of court procedures	1	2	3	4	(42)
The Lack of legal counsel for the accused	1	2	3	4	(43)
Lack of social services in the community to which you may utilize in your dispositions	1	2	3	4	(44)

	Great Difficulty	Some Difficulty	Little Difficulty	No Difficulty	
Lack of an alcohol/drug treatment program in community	1	2	3	4	(45)
The Legal Knowledge and training of the Justice of the Peace	1	2	3	4	(46)
Too much paperwork relating to the court	1	2	3	4	(47)
Lack of proper court facilities	1	2	3	4	(48)
Lack of language interpretor in courtroom when needed if accused speaks no English	1	2	3	4	(49)
Pressure from family and friends due to your job as a J.P.	1	2	3	4	(50)
Pressure from the community due to your job as a J.P.	1	2	3	4	(51)
Lack of supervision and/or feedback from a higher court	1	2	3	4	(52)
Amount of Renumeration fee	1	2	3	4	(53)
Relationship as a J.P. with the police in your community	1	2	3	4	(54)
Relationship with the social service agencies in your community	1	2	3	4	(55)
Other: (Specify) _____ : : :	1	2	3	4	(56) (57-58)
Other: (Specify) _____ : : :	1	2	3	4	(59) (60-61)

PART C: REASONS FOR DISPOSITIONS

23. In deciding whether or not to impose a particular disposition, what weight or importance would you give to each of the following factors. (Please circle appropriate number)

	No Importance	Little Importance	Moderate Importance	Great Importance	
The age of the accused	1	2	3	4	(62)
Community knowledge and attitudes towards the offense	1	2	3	4	(63)
The prior record of the accused	1	2	3	4	(64)
The circumstances in which the offense was committed	1	2	3	4	(65)
The seriousness of the offense	1	2	3	4	(66)
Deterrence of the offender	1	2	3	4	(67)
Deterrence of the community from committing such an act	1	2	3	4	(68)
Rehabilitation of the offender	1	2	3	4	(69)
Recommendations of the police officer	1	2	3	4	(70)
Recommendations of a pre-sentence report	1	2	3	4	(71)
The recommendations of the crown attorney/agent	1	2	3	4	(72)
Recommendations of the social worker	1	2	3	4	(73)
Recommendation of a Native Courtworker	1	2	3	4	(74)
Punishment of the offender	1	2	3	4	(75)
Restitution to the victim in the form of money or property	1	2	3	4	(76)

	No Importance	Little Importance	Moderate Importance	Great Importance	
Wishes of the offender's family or guardian	1	2	3	4	(77)
Employment situation of the accused, if is employed, or is about to be.	1	2	3	4	(78)
Protection of the community by the incarceration of the offender	1	2	3	4	(79)
Recommendations of a psychiatrist/psychologist	1	2	3	4	(80)
The family/home life of the offender (eg. if has children)	1	2	3	4	(81)
Other: (specify) _____ : : :	1	2	3	4	(82) (83-84)
Other: (specify) _____ : : :	1	2	3	4	(85) (86-87)

24. How important is the use of discretion, or acting according to your own judgement in your decisionmaking as a Justice of the Peace?

Very Important	Moderately Important	Low Importance	Not Necessary	No Opinion	
1	2	3	4	5	(88)

25(a) Do you feel that Community Justice Councils, with two or more J.P.'s sitting at once as a tribunal, may be an alternative for a community to utilize rather than a single J.P. conducting court?

Yes	No	No Opinion	
1	2	3	(89)

(b) Briefly state the reason for your answer.

_____

_____

_____ : : : (90-91)

26. What form of disposition do you impose most frequently as a Justice of the Peace?

	Very Frequently	Frequently	Not Very Frequently	Not At All	
Community Service Orders	1	2	3	4	(92)
Recommend a Defensive Driving Course	1	2	3	4	(93)
Recommend an alcohol/ Drug Treatment Program	1	2	3	4	(94)
Recommend a Pre-Sentence Report	1	2	3	4	(95)
Recommend an education or vocational program	1	2	3	4	(96)
Restitution to the offender	1	2	3	4	(97)
Give a warning or caution to the victim	1	2	3	4	(98)
Sentence	1	2	3	4	(99)
Fine	1	2	3	4	(100)
Banish the offender from the community for a period of time	1	2	3	4	(101)
Other (please specify) _____: : :	1	2	3	4	(102) (103-104)
Other (please specify) _____: : :	1	2	3	4	(105) (106-107)
Other (please specify _____: : :	1	2	3	4	(108) (109-110)

PART D: BACKGROUND INFORMATION

Please respond to the following questions regarding demographic information. This information is anonymous, and will be reported in such a manner as to preserve the anonymity of the individual respondents. Please circle the appropriate number, or fill in the answer with the appropriate information.

27. In what year were you born? 19: : : (111-112)

28. Sex: Male Female

1 2 (113)

29. Race: Native Caucasian Other

1 2 3 (114)

30. Marital Status: Single Married Other

1 2 3 (115)

31. How many children do you have? : : : (116-117)

32. How long have you lived in the community? (years) : : : (118-119)

start a new record :2:(4)

33. Education: (please circle the number of the highest level achieved)

Some High School	1	(5)
Completed High School	2	(6)
High School Equivalency Certificate	3	(7)
Some Community or Technical College	4	(8)
Completed Community or Technical College	5	(9)
Some University	6	(10)
Completed University	7	(11)
Some University Post-Graduate Work	8	(12)
Completed University Post-Graduate Work	9	(13)

PART E: JOB SATISFACTION

The following questions relate to the satisfaction you have with your job as a Justice of the Peace. Please briefly answer each question.

34. Please list the major sources of satisfaction you have experienced in your job as a Justice of the Peace in the Yukon Territory. Rank them in order of importance. Number one being the most important.

1. _____ : : : (14-15)

2. _____ : : : (16-17)

3. _____ : : : (18-19)

35. Please list the major sources of dissatisfaction you have experienced in your job as a Justice of the Peace in the Yukon Territory. Rank them in order of their importance Number one being the most important.

1. _____ : : : (20-21)

2. _____ : : : (22-23)

3. _____ : : : (24-25)

36. Generally, how do you enjoy your job as a Justice of the Peace in the Yukon Territory? Do you:

Enjoy it very much	Enjoy it	Indifferent	Dislike it	Dislike it very much	
1	2	3	4	5	(26)

Thank you very much for taking the time to answer the questionnaire. Your participation is appreciated.

APPENDIX B

JUSTICE OF THE PEACE - YUKON
LETTER OF AUTHORIZATION

TO _____

OF _____

STATUS - JUSTICE OF THE PEACE 1

You are authorized as a Justice of the Peace 1 by the Chief Judge to carry out only the powers and responsibilities marked by my signature opposite each enumerated power below.

AUTHORIZATION	POWERS
_____	1. Receive Information Pursuant to all Federal and Territorial Law.
_____	2. Confirm or cancel Appearance Notices, Promises to Appear and Recognizances.
_____	3. Issue or cancel Summons, Warrants for Arrest or Subpoenae.
_____	4. Issue or cancel Search Warrants pursuant to all Federal or Territorial Laws.
_____	5. Arraign accused persons.
_____	6. Grant Adjournments.
_____	7. Conduct Weddings.

STATUS - JUSTICE OF THE PEACE 2

In addition all the powers of a JP1, you are authorized as a Justice of the Peace 2, by the Chief Judge, to carry out only the powers and responsibilities marked by my signature opposite each enumerated power below.

AUTHORIZATION	POWERS
_____	1. Conduct judicial interim release hearings except where detention is required and the accused does not consent to detention.
_____	2. Sentence upon a guilty plea any by-law offence.
_____	3. Sentence upon a guilty plea any Territorial Act offence except where the Crown seeks a fine in excess of $500 or jail sentence in excess of 15 days.
_____	4. Sentence upon a guilty plea any summary

Federal Act offence except where the Crown in excess of $500 or a jail sentence in excess of 15 days.

5. Conduct hearings for the purposes of the identification of children under the Child Welfare Act.

6. Upon an admission of delinquency, sentence any juvenile where the Crown is not seeking to make the juvenile a ward of the State.

STATUS - JUSTICE OF THE PEACE 3

In addition of all the powers of a JP1, and all the powers authorized in your capacity of a JP2 by this letter, you are authorized as a JP3, by the Chief Judge to carry out only the powers and responsibilities marked by my signature opposite each enumerated power below.

AUTHORIZATION	POWERS
_____	1. Hear any Territorial Act or By-Law offence where the Crown does not seek a fine in excess of $2,000 or a jail sentence in excess of three months.
_____	2. Hear any summary Federal Act offence where the Crown does not seek a fine in excess of $2,000 or a jail sentence in excess of three months.
_____	3. Hear any application pursuant to the Child Welfare Act where the Department is not seeking an order of any kind for more than a two month period.
_____	4. Hear civil matters pursuant to any Territorial Act except contested applications under the Mental Health Act.

This Letter of Authorization is effective as of _____ until _____ unless otherwise amended or revoked by the Chief Judge of the Justice of the Peace Court.

_____
Chief Judge

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