Restorative Justice: *An assessment of
victim satisfaction with victim-offender
mediation*

By:

Miriam Malc, B.A. (Hons.)

A thesis submitted
to the Faculty of Graduate
Studies in partial fulfillment of
the requirements for the degree of

Master of Arts

Department of Law
Carleton University
Ottawa, Ontario
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**Restorative Justice: *An evaluation of victims' satisfaction
within the context of victim-offender mediation***

Submitted by **Miriam Malc**, B.A. (Hons.)
in partial fulfillment of the requirements for
the degree of Master of Arts

Chair, Department of Law

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Abstract

It has been suggested by many academics and practitioners alike that the treatment of victims by the criminal justice system is based on the neglect of their needs and rights. Victims' experiences are often ignored with the criminal justice only looking at ways of dealing with the crime, which in turn neglects to deal with the conflict created by the crime. Conflicts that arise out of crime are traumatizing and aggravating for victims, and it has been voiced that acknowledgement of their needs must be recognized. It is this area of concern that has led these academics and practitioners to work to develop a more viable alternative means to achieving justice. This alternative is Restorative Justice. In utilizing a restorative approach, specifically a victim-offender mediation model, this thesis will demonstrate that in general the satisfaction levels of victims increase in comparison to dealing with the criminal justice process.

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Chapter 1

Victims Needs: An essential component to achieving successful justice

The criminal justice system has long claimed to represent and protect all people within its jurisdiction in an equal manner. This claim, however, has been critiqued by many justice theorists, who argue that these claims of equality, fairness and protection are far from the truth¹. Victims and offenders are central to the criminal justice system; however, it is clear that the needs of these persons are, in fact, not addressed throughout the process.

While addressing the needs and rights of both victims and offenders is equally important, this thesis will specifically discuss the experiences of victims of crime. The definition that has been chosen to represent victims exemplifies a wide range of variables that can be used to identify what indeed constitutes a victim. It was recognized early on in this study that many academics and practitioners speak of victims, yet it appears that these scholars overlook the appropriate defining of the term (Ashworth 2000; Bazemore 1998; Erez & Laster 1999; Graycar 1999; Seymour 2000; Wemmer 2002; Young 2001). For the purpose of this paper, victims will be defined as,

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws...(Cohen 1998, Appendix G, # 1).

¹ The informal justice movement has been influential to restorative justice for these academics critique and question justice in search for a realistic and possible execution of the alternative justice system. Such authors are Jerold Auerbach *Justice without Law?* (New York, Oxford University Press, 1983), Nils Christie "Conflict as Property", Burt Galaway and Joe Hudson eds., *Perspectives on Crime Victims* (Toronto, The C.V. Mosby Company, 1981); Roger Matthews, "Reassessing Informal Justice" in Roger Matthews eds., *Informal Justice?* (Newbury Park, C.A., Sase Publications 1988).

It has been understood and suggested by victims of crime that their experiences and needs have been placed on the sidelines, and they are left to watch the process with little or any involvement. Until recently, victims' voices have been completely silenced, leaving them without many rights or the protection by the system they depend on. The ironic point at hand is that victims' dependency on the system may be quite obvious, however, concurrently, the system is quite dependent on the victim. Without the help of the victim reporting the incident in the initial stages, the criminal justice system would have limited means of dealing with crime (Kelly & Erez 1997, 232). Irrespective of this fact, the criminal justice system continues to be neglectful when dealing with victims of crime.

Sadly, criminal justice as we know it focuses little attention on the needs of the victim. The Western criminal-justice process boils down to three simple questions: What laws have been broken? Who "done" it? What does the offender deserve? (Zehr 1997a, 22).

These three questions symbolize the history surrounding the criminal justice system, and are the main issues of debate when discussing this system.

Over time, the justice system has evolved into an institution that equates punishment with justice (Zehr 1997a, 24). Previous to this transformation, justice was sought through resolution initiated by the victim, offender, and the community. Restitution was paid directly to the victim and social control was informally maintained by the close-knit community (Llewellyn & Howse 1998, 5). However with the rise during the 12th century of the Germanic notion of the King's Peace² in England, this all changed.

² This adjustment to dealing with crime took place in 1066, with the Norman Conquest, where "any injury to a person or in a place that was protected by the King's Peace converted the private injury into a public wrong. This conversion enabled the emerging state to take complete control over a conflict of the accuser and accused, and resulted in the transformation of a compensatory award into a fine for the benefit of the royal coffers. Eventually the King's Peace covered all of England and all of its inhabitants" (Young, 2001, 6)

The conception of King's peace suggested that all crimes that are committed within the kingdom, will not be crimes against the person, but more so would be a crime against the king (Young 2002, 6).

As history progressed, capitalism became embedded into the consciousness of modern society, and this further encouraged and entrenched the reorganization of handling crimes from the victim to the state. This change, in turn, allowed the state to engage in a more active role in dealing with criminals and their crimes. One of the greatest changes that occurred was the necessity of lawyers to deal with and resolve legal issues pertaining to crime. Therefore, the only way to resolve a crime was to involve the criminal justice system, and in turn employ its agents (Christie 1977, 4).

As Christie discussed in "Conflicts as Property", the resolution of conflict has been taken away from its original owner, the victim, and redirected to the Crown. The lawyers have taken over, or, more specifically, appropriated the crime from victims and their offenders (Christie 1977, 1).

In modern criminal trial, two important things have happened. First, the parties are being represented. Secondly, the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena, reduced to the triggerer-off of the whole thing. She or he is a sort of double loser; first, vis-à-vis the offender, but secondly and often in a more crippling manner by being denied the right of full participation in what might have been one of the most important ritual encounters in life. The victim has lost the case to the state (Christie 1977, 3-4).

It is evident throughout Christie's discussion that the experience of victims is one that is based on lack of respect and disregard. Nonetheless, while Christie has provided much to understand how crimes have been taken over by the state, namely through the Crown attorney, it is apparent that some clarification is warranted.

Christie is particularly interested in discussing how crimes are handled within the criminal justice system, yet this perspective seems to discount the fact that it is not the crime that needs to be resolved, but instead the conflict that is created out of crime. The development and application of the King's Peace obscured this reality and altered the role of the victim, and his/her potential participation in the criminal justice process. Christie further suggests that:

The victim is a particularly heavy loser in this situation. Not only has he suffered, lost materially or become hurt, physically or otherwise. And not only does the state take the compensation. But above all he has lost participation in his own case. It is the Crown that comes into the spotlight, not the victim. It is the Crown that describes the losses, not the victim. It is the Crown that appears in the newspaper, very seldom the victim. It is the Crown that gets a chance to talk to the offender, and neither the Crown nor the offender are particularly interested in carrying on that conversation. The prosecutor is fed-up long since. The victim would not have been. He might have been scared to death, panic-stricken, or furious. But he would not have been uninvolved. It would have been one of the important days in his life. Something that belonged to him has been taken away from that victim (Christie 1977, 7-8)

The voiceless silent position of the victims in the criminal justice system is therefore a matter of great contention, and one element that has left many victims advocates searching for an alternative and more satisfactory approach.

In placing the needs of victims' aside, as is so often done by the criminal justice system, there is a strong fear of re-victimization of the victim. Not only has the victim been violated by the offender's actions, but simultaneously the victim then becomes violated by the state through its sheer lack of regard. This is the same state that is in place to not only protect victims, but also to provide them with justice (Roach 2000, 258). "Victims want to know what they can expect and what their role is in the criminal justice

process. After reporting a crime to the police, victims usually want to remain informed of any developments in their case” (Wemmers 2002, 44). Therefore, the persistent neglect of these needs and rights that victims continually experience from the criminal justice system has left them frustrated and marginalized.

The need for respect and involvement throughout the process is very important to the victim. Victims require continuous information and inclusion by the criminal justice system. They want their story to be heard and accepted by the courts, and further they want to know the outcome and what, if any, their compensation will be (Shapland et. al. 1985, 176). A study conducted by Shapland et. al. found that victims originally had high satisfaction with their initial encounter with police officers. However, their satisfaction rate dropped when the police failed to keep the victims informed of the progress of their case (Shapland et. al. 1985, 176).

Victims suggest a further dissatisfaction with the system through its weak architectural design. It was found by victims that there was no separate seating for them, he/she was included with the general public, which was often with the offender’s family and support group. Further, if a plea of guilty resulted, the victim was not informed of the location to go to in order to get further information, or how to proceed, leaving them confused, frustrated and isolated (Shapland et. al. 1985, 176). It is this treatment that has led many victims to support alternatives to the present criminal justice system in hopes of achieving a more victim-sensitive approach. The principles and goals that are set out in a restorative paradigm and central to victim-offender mediation have been suggested as a more suitable alternative.

It should be noted that the victim-offender mediation process that will be introduced and explained throughout this thesis is one that is presented in its ideal form. This process is suitable for certain victims, while at the same time can be found inappropriate for others. This model will mainly address crimes and conflicts that are minor and usually a result of young offenders' delinquency.

The success of this mediation process is generally dependant on the victims that voluntarily choose to participate. On the one hand, this can serve to work towards the positive outcomes from the evaluations of the process, but on the other hand, can prove to be problematic due to the issue of self-selection. This notion of self-selection then "creates a treatment group of participants (both offenders and victims) who have chosen to participate in the program and may therefore be more motivated than the control group" (Latimer et. al. 2001, 17). Therefore self-selection can be problematic in that the results of the evaluations especially on satisfaction may in fact be skewed due to the motivational factor.

Nonetheless, in understanding the idealism of the process at this present point in time, and furthermore the view of self-selection, it is important to demonstrate that there are far fairer and more satisfactory processes other than the criminal justice system that victims can access as a resource to achieving justice.

Restorative Justice: An alternative way of looking at justice

The search for alternatives to justice has led many academics, scholars, non-profit organizations, and, more recently, victim rights groups, to review an alternative process labelled restorative justice. As explained by Howard Zehr:

Restorative justice views crime, first of all, as harm done to people and communities. Our legal system, with its focus on

rules and laws, often loses sight of this reality; consequently, it makes victims, at best, a secondary concern of justice. A harm focus, however, implies a central concern for victims' needs and roles. Restorative justice begins with a concern for victims and how to meet their needs, for repairing the harm as much as possible, both concretely and symbolically (Zehr 1997b, 68).

Additionally,

Restorative justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime-victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration and prevents future harm (Cormier 2002, 1).

The notion of restorative justice offers victims a more active role within the justice process. It provides a forum for them to express how the crime has since affected their lives. It is believed that this capability of becoming involved in the justice process will provide victims with a sense of justice, and the opportunity to seek closure from their victimization³ (Zehr 1997a, 68).

Further, restorative justice is future focused, looking at a way to solve the underlying problems of recidivism of crime by the offender, and promote healing on the part of the victim. Within the dominant system the crime as a legal entity may have been resolved to the standards of the system, but the conflict is still left very much with the parties. Conversely, in the restorative paradigm the emotions of the conflict are in the hands of the victim, while at the same time increasing the participation of the offender and the community (Llewellyn & Howse 1998, 24).

³ Refer to Appendix #1

The restorative justice movement has gained much ground in the past few years. Van Ness and Strong suggest that five movements have been influential in the growth of restorative justice. These five movements are as follows:

1. The **informal justice movement** emphasized informal procedures with a view to increasing access to and participation in the legal process. They focused on delegitimation in an effort to minimize the stigmatization and coercion resulting from existing practices.
2. **Restitution as a response to crime** was rediscovered in the 1960's. The movement focused on the needs of victims, maintaining that meeting the needs of victims would serve the interest of society more generally⁴.
3. The **victim's rights movement** works to have the rights of victims to participate in the legal process recognized.⁵
4. **Reconciliation/conferencing movement** – Van Ness and Strong cite two major strands in this movement: ⁶
 - a. *Victim/offender mediation* – Originating from efforts of the Mennonite Central Committee, this process brings victim and offender together with a mediator to discuss crime in order to form a plan to address the situation.⁷
 - b. *Family group conferencing movement* in New Zealand – arising out of the Maori traditions in New Zealand. This process is also used in a Canadian context, allowing victims and their families to meet with offenders and their families. Other members are also involved including police, supporters, parole officers and any other persons that had been affected by the crime. Further, the concept of re-integrative

⁴ An examination will take place in chapter 3; looking to see if victims in fact do receive restitution from the offender once an agreement is developed.

⁵ Further readings in this area are: The Honourable Mr. Justice Casey Hill "Expanding Victims' Rights" (Alan D. Gold Collection of Criminal Law Articles, 1999), Marty Price "Punishment – What's in it for the Victims?" (Kaleidoscope of Justice, 1997, Vol. 5, No. 1.), Anne Seymour "Providing Victim Services within a Restorative Justice Paradigm (Corrections Management Quarterly, 2000, 4(3) 21-29). As well as organizations that have worked very hard to seek justice for victims. Some of these organizations are: ACJNet, CAVEAT (Canadians Against Violence), Canadian Resource Center for Victims of Crime, VOMA (victim Offender Mediation Association), & VORP (Victim Offender Reconciliation Program).

⁶ I would also like to add a third model – Sentencing Circles. The process involves the victim, offender, family, and community members. These people meet with the judge to consider what type of sentence should be decided upon. They believe that crime affects not only the victim and offender but the community as well (A Consultation Paper, 2000, 6).

⁷ This model will be the focus of this thesis. The model and questions surrounding victim-offender mediation will be discussed in more detail in chapters 2, 3 & 4.

shaming is explored and utilized in certain contexts (A Consultation Paper 2000, 5).⁸

5. The **social justice movement** – Van Ness and Strong use this label to refer generally to a number of different groups working for a vision of justice as concerned inherently with social well being (Van Ness & Strong 1997, 15-24).

These movements make up the contributing trends of the restorative justice paradigm. Each component is essential, but the main focus of this paper is to understand the experiences and needs of victims of crime, as these are addressed by providing the victim-offender mediation model (VOM). This process originated in Canada and has been the most widely researched of all the models. The extensive research used is important considering that the movement is still young, and not many longitudinal studies have been conducted (Cormier 2002,12). Prior to further discussion on victim-offender mediation, restorative justice in a Canadian context will be reviewed.

Restorative Justice: A Canadian Outlook

Canada has been quite involved in the growth of the restorative justice movement. Restorative justice initiatives have been integrated and applied to every level of the criminal justice system. The programs have been found from police diversions all the way to post sentence, such as parole (Hill 2002, 6). In 1988, a published report called *Taking Responsibility* (Daubney Report) was released by the Parliamentary Standing Committee on Justice and Solicitor General. This report focused on sentencing, conditional release and related aspects of corrections. Similarly, the report placed an

⁸ The notion of re-integrative shaming by John Braithwaite has been introduced and applied using this model. Re-integrative shaming has been an essential component to the restorative justice movement. Braithwaite explains “re-integrative shaming communicates disapproval within a continuum of respect for the offender; the offender is treated as a good person who has done a bad deed. Stigmatization is disrespectful shaming; the offender is treated as a bad person. Stigmatization is unforgiving – the offender is left with the stigma permanently, whereas re-integrative shaming is forgiving – ceremonies to certify deviance are terminated by ceremonies to decertify deviance. Put another way, societies that are forgiving and respectful while taking crime seriously have low crime rates; societies that degrade and humiliate criminals have higher crime rates” (Braithwaite, 2000, 281).

emphasis on the needs of victims, and the use of restorative justice practices (Cormier 2002, 3).

The committee recommended that the government 'support the expansion and evaluation through Canada of victim-offender reconciliation programs at all stages of the criminal justice process which: a) provide substantial support to victims through effective victim services; and b) encourage a high degree of participation' (Cormier 2002, 3).

In 1996, the sentencing principles within the *Criminal Code*⁹ were amended. These adjustments to the *Criminal Code* focused on encouraging judges to use alternative approaches to sentencing. While many sentencing alternatives are addressed in these amendments, only victim-offender mediation programs will be discussed within this paper.

The sentencing reforms were based on a restorative justice philosophy, whereby sentencing of offenders through community-based measures was believed to be more beneficial than traditional sentencing practises. The hope was that the offenders would take responsibility for their wrongdoing and make amends, primarily through restitution to the victim (Roach 2000, 255). The concept of restitution is established through a series of methods, such as financial compensation, or completing labour for the victim or the community and so on. The development of the restitution agreement allows for the victim to contribute his/her opinion towards the outcome, and is then provided a role in the establishment of a possible resolution agreement. This ensures the victims' involvement in the process by helping victims' to take ownership over their conflicts (A Consultation paper 2000, 5).

⁹ R.S.C 1985, c.C-46, Part XXIII

The purpose and principles of sentencing in Section 718 of the *Criminal Code* are stated as follows:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other person from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders
- (e) to provide reparation for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and the community (Greenspan & Rosenberg 2000, 1194).

Further, under Section 718.2 the *Criminal Code* addresses additional sentencing principles. For the purpose of this thesis, the most pertinent section of 718.2 is part e. It states that “all available sanctions other than imprisonment that are reasonable in the circumstance should be considered for all offenders, with particular attention to the circumstance of aboriginal offenders” (Greenspan & Rosenberg 2000, 1196). It can be noted that the courts are becoming aware of the ever increasing rates of imprisonment in Canadian society, especially in regards to the over-representation of aboriginal people in the Canadian prison systems. It is suggested that the courts whenever possible alternatives to imprisonment should be applied. This has recently been the case in regards to victim-offender mediation (Ryan & Calliou 2002, 6).

It is believed that through the application of restorative justice initiatives, such as victim-offender mediation, the experience of the offender and, more so the victim, is one of a higher level of satisfaction. Section 718.2.(e) of the *Criminal Code* opens the door to restorative justice programs being implemented and practiced within a restorative justice

framework (Cormier 2002, 12). The victim-offender mediation model is one that claims to acknowledge and respect the needs and rights of victims. The process and the mediating staff represent protection and fairness, which in turn provides a far more appropriate and acceptable sense of justice.

Victim – offender mediation: A brief background

Victim-offender mediation was first established in Kitchener, Ontario, Canada, in 1974, by the Mennonite community. The vision of the program placed emphasis on having offenders (in this case two juveniles) take responsibility for their actions, (Roberts 1990, 237) by repairing the harm that they had caused (Benjamin 1999, 6). This system provides the offenders with an opportunity to work for their restitution and directly compensate the victim. The written agreement then is mutually developed by the victim and offender through the facilitation of a neutral third party (the mediator).¹⁰

Victim-offender mediation programs are set out to achieve face-to-face interaction between victims and their offenders, aided by the mediator. Such interaction can only take place once an offender has acknowledged his/her guilt to the crime. Victim-offender mediation programs then work towards creating dialogue between the two parties in conflict. Dialogue allows the opportunity for victims to tell their story, express their emotions and seek answers to the confusion that has resulted from the victimization (Gehm 1998, 2). Accordingly, this process is expected to meet the needs of the victim, as well as ensuring the accountability and responsibility of the offender.

In sum, victim-offender mediation claims to represent a fairer and more victim-sensitive approach to dealing with crime. Research shows that victims' satisfaction is in

¹⁰ This form of reparation needs to be further examined; it is crucial to see if the victims are in fact getting what they have been promised. Consequently, if they do not receive what they have been promised will this create the door for their re-victimization? (Roach, 2000, 261).

fact found to be higher in the initial period following victim-offender mediation, in comparison to dealing with the criminal court process (Bazemore 1998; Bonta et. al. 1998; Latimer & Kleinknecht 2000; Latimer et. al. 2001; Umbreit 1995, 1997, 1998). It should be noted, however, that there remain ongoing concerns of whether this model really does treat victims better, and facilitates closure through questioning and forgiveness. This thesis will critically analyze the degree to which victim-offender mediation programs help victims to achieve a higher level of satisfaction through reparation, communication, and restitution compared to the present criminal justice system that focuses mainly on punishment.

Further subsidiary issues will also be considered throughout this thesis, including for example, the issue of voluntariness of participants. Voluntary participation in the process of victim-offender mediation is crucial because victims need to feel that they are involved on grounds that are acceptable to them. Occasionally, victims have been coerced into participating owing to community obligations, or lack of information about their options, thereby undermining the healing principles of the process; furthermore, once a victim has agreed to participate in victim-offender mediation, it becomes imperative that the needs and protection of the victims are secure. Again, if these key components are not placed at the forefront then failure is bound to result; restitution is also a vital component to the success of this process, and it is necessary to determine the completion rate of the agreements both during the development stages and the follow through. All these issues are relevant concerns that need to be addressed to ensure that a restorative approach to dealing with conflicts from crime is practiced appropriately and further maintained.

Methodology and limitations of the research:

In order to develop and conduct this thesis research, a vast array of case studies, published articles and books were consulted. The majority of research presented in this thesis is on research reports and secondary materials. The greater part of the research coincides with each other, resulting in positive evaluation of victims and offenders experiences within the process.

It should be noted that although recent evaluations have been obtained, the data is still young. In saying this, it is hard to determine the long-term outcomes of this process based on the lack of completed longitudinal studies. It is a focus of this study to determine if any longitudinal evaluation has been completed focussing on victims' satisfaction rates, and, further, if restitution was upheld by the offender as outlined in the written agreement.

Chapter Overview:

Chapter two will provide a detailed analysis of the experiences of victims of crime within the present criminal justice system. This will include a discussion of the historical developments that have encouraged victim advocacy, and the reforms that have taken place in regards to Canadian law. This discussion will lead into a description of the victim-offender mediation model and its process. Moreover, a case study example will be utilized to promote further understanding of the objectives of these programs.

Chapter three will be a thorough investigation of quantitative and qualitative evaluations that have been published. This chapter will proceed to answer the research question at hand. Here, the focus is on studies that have been conducted on victims. This chapter will also explore the problems and limitations of the studies. Subsequently,

this will lead to an understanding of the many concerns that have been brought forth throughout this thesis in regards to victims.

Chapter four will involve a critical review of the restorative justice literature in relation to victim-offender mediation in order to reveal if the goals set out are being achieved. In addition, certain issues surrounding the validity of output of the evaluations will be raised and addressed. Upon completion of this chapter readers will be familiar with both the positive and negative elements of victim-offender mediation at this present point in time.

Chapter five will address conclusions in relation to victims' satisfaction and their experiences within victim-offender mediation programs. This section will summarize the data and research obtained and subsequently present conclusions. There will also be recommendations for future steps that are necessary in order to continue to further develop and study the work of restorative justice, specifically victim-offender mediation. This chapter will also readdress the research question and set forth conclusions.

Chapter 2

Considering the needs and rights of victims in the criminal justice process

As mentioned within the first chapter, to be a victim of crime can be one of the most traumatic experiences a person has to endure. Victims are frightened and confused and, more often than not, unaware of their rights and those resources available to them. This lack of knowledge is expected; bearing in mind the inadequate consideration and access to information provided by the criminal justice system to victims (Cohen 1998, 3). The criminal justice system has been put in place to ensure the security and safety of society, yet these claims of protection are not upheld. While the justice system does seek to deal with offenders, the focus on punishment has regrettably led to the unfortunate disregard of victims (Cohen 1998, 3). Adam Graycar explains the needs of victims within the criminal justice system as follows:

Needs and Requirements of Victims

- **Support** – support from family and friends, as well as support received by victim support agencies and other support groups is one of the most important needs that victims of crime have to aid in their recovery.
- **Information and knowledge** – on services available, on the progress of the police investigation, the role of the DPP [prosecutor] and likely time frames of prosecution, information on court process, and explanations of legal requirements such as reasonable doubt, information regarding the role the victim plays in the court, possible outcomes and sentences, and much more.
- **Choices** – accurate information allows victims to make their own choices. Service providers noted the importance of victims being able to regain some control over their lives. Being able to make their own decisions empowers the victim.
- **To have their say** – it is important for victims to be able to have their say, to tell their story (completely) and to be heard. Victim

impact statements go some way to address this, but certainly not far enough.

- **Immediate help and advice** – the sooner victims receive positive support and advice the easier their recovery will be.
- **Follow up by police and through the criminal justice system** – victims need to be kept informed at all stages of the police investigation and prosecution, to be told decisions affecting them as they happen and not to find out by accident or in court.
- **A coordinated streamlined system that is easy to access** – the system needs to be more automatic, with victims having knowledge of how the system works and the services available to them.
- **Sensitivity and understanding** – by family and friends, police, medical practitioners, service providers, DPP, judiciary and particularly the media (Graycar 1999, 4).

These eight needs are essential to the victims' recovery process and should take priority in the criminal justice system. By not addressing these basic requests, the criminal justice system has consequently managed to further alienate victims (Wemmers 2002, 44).

In "Victims' Rights-A Voice, Not a Veto" the Report of the Standing Committee on Justice and Human Rights presented by Shaughnessy Cohen, a thorough explanation of victims needs and rights were outlined and will be addressed below.

To summarize, victims ask for a voice in, not a veto over, what happens at each stage of the criminal justice process. They ask for information and notification – about how the criminal justice functions, about the programs and services available to them, and about the various stages of the case in which they are involved. They argue that they are entitled to be treated with dignity. They urge the provision of adequate financial, human, and other resources to programs intended for victims of crime. They identify as a critical problem the uneven availability of victims' programs and services both between provinces and territories, and within them. In their view, addressing all of these issues will restore the imbalances they see in the criminal justice system (Cohen 1998, 5)

What has been observed is that the recommended changes in acknowledging victims by the criminal justice system are actually not occurring. The needs that victims indicate should be acknowledged are actually entirely ignored (Zehr September 1997, 23-34). Hence, this neglect has caused much controversy surrounding the rights of victims. This in turn has led victims' advocates to work towards the establishment of reforms in Canadian law to ensure the acknowledgement of victims and their needs.

Canadian law reform and amendments: changing the treatment of victims of crime

The Canadian government's involvement in responding to victims' rights originated in the late 1960's. Between the late 1960's and early 1970's academics became increasingly concerned with the needs and rights of victims. Then, in 1973, the federal government set up a cost-sharing initiative with the provincial and territorial governments to show their support of victims' compensation programs (Cohen 1998; 10), which was in turn followed by the development of the "Federal/Provincial Task Force on Justice for Victims of Crime" in 1981. This task force had the main goal of "examining the role of victims in the criminal justice system" (Cohen 1998, 10); it achieved this goal in 1983, concluding that reforms were needed to ensure that victims were provided with adequate information concerning their violation. As a result there was the development of victims programs, victim impact statements at sentencing, and the provision of compensation for the victims' losses (Cohen 1998, 10).

Additionally, in 1985, the "*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*"¹¹ was implemented and developed by the United Nations

¹¹ The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, has been exemplified in Appendix G of "Victims' Rights – A Voice, Not A Veto" by Shaugnessy Cohen (1998).

and co-sponsored by Canada. This Declaration motivated many countries to focus on the rights of victims, as well as contributing to services and programs for victims. This Declaration further led to the acceptance of the *Statement of Basic Principles for Victims of Crime*, which was adopted by the Federal, Provincial, and Territorial governments of Canada in 1988 (Cohen 1998, 11). The statement is as follows:

In recognition of the United Nations *Declaration of Basic Principles of Justice for Victims of Crime*, Federal and Provincial Ministers Responsible for Criminal Justice agree that the following principles should guide Canadian society in promoting access to justice, fair treatment, and provision of assistance for victims of crime.

1. Victims should be treated with courtesy, compassion, and with respect for their dignity and privacy, and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
2. Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they have suffered.
3. Information regarding remedies and the mechanisms to obtain them should be made available to victims.
4. Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress, and ultimate disposition of the proceedings.
5. Where appropriate, the views and concerns of victims should be ascertained and assistance provided throughout the criminal process.
6. Where the personal interests of the victims are affected, the views or concerns of the victims should be brought to the attention of the court, where appropriate, and consistent with criminal law and procedure.
7. Measures should be taken when necessary to ensure the safety of victims and their families, and to protect them from intimidation and retaliation.

8. Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims. And guidelines developed, where appropriate, for this purpose.
9. Victims should be informed of the availability of health and social services, and other relevant assistance, so that they might continue to receive the necessary medical, psychological, and social assistance through existing programs and services.
10. Victims should report the crime and co-operate with law enforcement authorities (Cohen 1998, 11-12).

As shown in this declaration for victims, the needs of respect, involvement, and compensation are certainly outlined, yet further discussion surrounding these amendments remained pertinent.

Reforms in relation to victim impact statements were revised in *Criminal Code* in 1988. Bill C-89 allowed courts to consider victim impact statements

for the purpose of determining the sentence to be imposed on the offender”, further “section 722 requires such a statement to be prepared ‘in writing in the form and in accordance with the procedures established by a program designated for that purpose’, by the Lieutenant Government Council of the applicable province. Where the victim is dead, ill, or incapacitated, the definition of ‘victim’ can include a spouse, relative, or anyone responsible for the care or support of the victim or his or her dependant (Cohen 1998, 28).

The victim therefore has an opportunity to put into writing for the judges his/her experience with the crime, and more so, what form of punishment and/or restitution they would like to see. As useful as this tool may seem in assisting in the inclusion of the victim into the court process, it has been observed that the victim impact statement in fact does not hold much ground within the criminal process.

In making decisions about the credibility of victims’ claims, practitioners relied on some dubious common sense assumptions

about victim behavior. Generally, victims input was deemed unreliable because, in the words of one police prosecutor, '[victims] become very emotional, and emotions cloud judgement'. Legal professionals went further, suggesting that victims have built-in incentives to lie or exaggerate. Many practitioners assumed that victims are greedy and mercenary. One magistrate observed, 'I think victims will exaggerate if there is a coin for them in it'. Contrary to the findings of research, professionals assumed that victims were vindictive. Most victims will see the sentencing as purely punitive, with retribution as the predominant factor. They do not understand the criminological purpose of sentencing' (Erez & Laster 1999, 543).

It is notable that the practitioners of the criminal justice system do not take the experiences and opinions of victims seriously, and are instead bound by stereotypical images which in turn end up clouding their vision of victims and their needs. By the courts not taking the victim impact statement seriously seems to only undermine the reforms and also risks the revictimization of the victims. While it is positive to see reforms being implemented, if the reforms are not supported, they are unlikely to be effective.

Following the recommendations put forth in "Victims' Rights – A Voice, Not A Veto", amendments were made to the *Criminal Code*. In December 1999, Bill C-79 was introduced and developed; this legislative amendment was put forth with the intention of providing improved safety, security and privacy for victims of crime. As noted by the Minister of Justice of the day:

Victims of crime deserve a criminal justice system that treats them with courtesy, compassion and respect, one that is responsive to their needs. The *Criminal Code* will go a way in strengthening the voice of victims in the criminal justice system, especially in decisions that affect their safety, security or privacy" (Department of Justice 1999).

The major changes to the *Criminal Code* are to include the following:

- Ensure victims are informed about the opportunities to prepare a victim impact statement and will permit victims to read the statement out loud if they choose;
- Require police and judges to consider the safety of victims in all bail decisions;
- Make it easier for victims and witnesses to participate in trials by expanding protections for young victims and witnesses from personal cross-examination by accused persons representing themselves; expanding opportunities for victims and witnesses to have a support person present when giving the testimony; and permitting the judge to ban the publication of the identity of victims and witnesses in appropriate circumstances; and
- Require all offenders to pay an automatic victim surcharge (an additional monetary penalty), which will increase revenue for provinces and territories to expand and improve victim services (Department of Justice 1999).

These modifications to the *Criminal Code* placed greater emphasis on making resources available to victims. Nevertheless, the full potential of these amendments realistic execution of the underlying principles have yet to be achieved. While these basic needs should be accessible at every level of the justice system, victims are still continuously mistreated and marginalized by the system. Where specific amendments have been made to help enhance the experience of victims, it has proven to be difficult to ensure that the changes are actually taking place. While the courts have made the necessary changes, it is too presumptuous to assume that the amendments will be respected and positively reinforced by the personnel of the criminal justice system (Christie 1977, 3-4).

In fact, the principles that have been laid out within the declaration and amendments are far more contingent and more often realistically executed to the victim by an alternative means of justice. The restorative approach as introduced within Chapter

One, works to meet all these basic goals. It works to ensure that both the victim and the offender have a more participatory role within their process. Additionally, they are the ones who collectively develop a restitution agreement that meets the needs of both the parties.

Victim-Offender Mediation: An alternative approach to seeking victims' justice

As stated earlier, victim-offender mediation¹² originated in Kitchener, Ontario, in 1974. It began as a Mennonite rejection to the handling of crime within the criminal justice system in favour of more communal forms of dealing with crime, and those involved in it, whether as a victim or an offender. The victim-offender mediation model as suggested by the Mennonites claims to empower the victim, while simultaneously increasing the responsibility of the offender. By providing a forum for both the victim and offender to participate in the justice system, the Mennonites had hopes of achieving a fairer means to obtaining justice and dealing with crime (Benjamin 1999, 6). Since the 1970's, much short-term research has been conducted on the practicality and success rate of the victim-offender mediation model. These studies have provided information that has been useful to the growth of the process and will be furthered examined in the following chapter.

The victim-offender mediation model embodies the restorative justice principle that crime is essentially an event between people and not a violation against the state. Accordingly, the people involved and affected by the crime should be responsible for its resolution (Umbreit 1995, 139). Within this model the parties are not disputants, for the person who has caused the crime admits his or her guilt and wants to work towards a

¹² Victim-offender mediations are also often referred to as 'victim offender reconciliation programs' (VORP). The VORP program was introduced in 1978, to the United States in Elkhart, Indiana (Shenk, 2001, 193). Refer to Appendix #2

resolution with the victim. Subsequently, the issue of guilt or innocence is not a factor to be determined, rather parties' needs are issues to be mediated (Bradshaw 1998, 18).

The majority of victim-offender mediation programs are

operated by private non-profit, community based organizations working collaboratively with the local court system. Cases generally focus on non-violent property offenses and minor assaults, although a handful of programs deal with violent felony offenses exclusively (Gehm 1998, 4).

Presently there are five means for accessing victim-offender mediation programs within the criminal justice system. These are police (pre-charge), Crown (post-charge), courts (pre-sentence), corrections (post-sentence), and parole (pre-revocation) (Latimer et. al. 2001, 2). The process commonly begins "when judges, probation staff, prosecutors or victim assistance staff refer juvenile or adult offenders (most often young offenders convicted of such crimes as theft and burglary)" (Umbreit et. al. 1994, 7). Once a victim and their offender have agreed upon participating in the mediation process, a mediator is brought into the proceeding in order to facilitate dialogue and help them work towards a resolution.

Victim-offender mediation thus brings victims and offenders together in a context created for dialogue. Through the facilitation provided by the mediator the two parties jointly discuss the violation and the aftermath of the crime. The mediator is skilled in helping the victim and offender to formulate a future course of action. This course of action then provides an avenue for the offender to "make things right" (Van Ness & Strong 1997, 21).

One of the chief benefits of the victim-offender mediation/dialogue programs is that they humanize the criminal process. By bringing criminal offenders together face-to-face with their victims, it becomes more difficult for the offenders to

rationalize their criminal behaviour. As they face the individual that they have victimized, the harm caused by their crime is also no longer an abstraction but very real (Bellard 2000, 3).

Therefore, the effects of the mediation process allow for the opportunity of communication and healing. Furthermore, the mediation process is to provide a conflict resolution process which is fair to both the victim and the offender, and in which the needs of the victim, can be communicated and addressed.

The opportunity to seek understanding of the crime permits victims to feel a sense of empowerment, which in turn aids in their healing process. Empowerment helps to give the participant a sense of control of the situation, through communication by the facilitated dialogue. As stated by Zehr, “mediation must be dynamic, taking into account the participants, and empowering them to work in their own ways” (Van Ness & Strong 1997, 71). The goal of empowerment is one that must be accomplished in order for the process to be successful, and truly restorative. The achievement of this goal is dependant on the victim, offender, and the mediator. The mediator therefore holds a critical place in the process by ensuring that the restorative justice principles are met and actively maintained.

These essential skills contributing to an effective mediation are based on listening and communicating. The mediator is able to create a forum for the victim to encounter the offender face-to-face and lead the discussion between the conflicting parties. The encounter provides an opportunity where the transformation of relationships may begin to develop.

The concept of encounter introduces elements of the process that are only found within restorative justice context, specifically the victim-offender mediation model. The

parties are given the opportunity to interact and deal with the violation. Through dialogue, the parties are asked to describe what happened to them and how the violation has since affected them, as well as how they see the crime and its consequences. This discussion permits the parties to express emotions and feelings, and in contrast to the mainstream criminal justice system experience of victims, the voice of the victim is finally heard. Through encounter, the parties are able to take the dispute into their own hands along with the guidance of the mediator, craft a solution that is deemed far fairer and just for all involved (Umbreit et. al. 1995, 12). In order to understand the process more carefully, an explanation of the elements of victim-offender mediation follows.

The phases of the victim-offender mediation model

The victim-offender mediation model commences through case referral by a number of channels including¹³ the “juvenile court, probation, police departments, and even local community service organizations and churches” (Arrogo 1998, 637). When a case is referred, it will only move onto the mediation organization once the offender has admitted his/her guilt and responsibility to the crime. This acknowledgment of guilt by the offender is crucial to ensure that his/her intentions are in good faith. When the recognition of guilt has taken place, the case is turned over to the mediator who will then begin to investigate and understand the issues at hand (Arrogo 1998, 637).

During this early phase the mediator provides time to address informational and emotional needs resulting from the violation. This phase is usually done over the phone by the mediator who interviews the parties generally within the first two weeks of

¹³ It should be noted that due to the different needs of the victims and offenders the mediation model is not based on one single structure. It has an element of flexibility in order to ensure the needs of the participants are continuously being respected. Nonetheless, there have been certain assumptions and informal guidelines set out that guide the process effectively. It is these broad guidelines which we consider here.

obtaining the case. This is followed by a discussion of losses, be it economical or financial and the possibility of coming up with options towards an amicable resolution (Umbreit 1995, pg. 140). This first phase is important as it helps the process get underway, however, the mediator attempts not to reveal too much information until they have the opportunity to sit down with each person face-to-face. The mediator, through certain lines of questioning, is able to understand the emotions and, perhaps more importantly, whether the particular conflict is appropriate for the mediation setting¹⁴ (Arrogo 1998, 637).

The second phase involves the preparation period before the mediation. The mediator meets with the victim and offender separately. This meeting provides the mediator with the opportunity to assess an understanding of the victimization from the participants' personal perspectives (Arrogo 1998, 637). This is done prior to the scheduling of the mediation. During this session the mediator listen to the stories of each party, explains the process, and encourages the parties' participation (Umbreit 1995, 142). Similar to the first phase, the second phase is crucial to the process as the mediator now meets one on one with each party to try to get the facts out on the table. Further, the mediator has more time to assess the needs of each party in order to ensure that re-victimization will not occur. The mediator can also send the parties away with tasks in order to come to the table better prepared (Umbreit 1995, 142).

In the third phase the actual mediation takes place. In this phase, six objectives must be completed. All these components are crucial to the success rate of the mediation.

¹⁴ Situations in which a victim-offender mediation would be inappropriate would be if either of the parties were coming to the table in bad faith, additionally if there is fear for the victim's safety, especially involving intimate violence between partners (CMS-D Training Manual, 2000,23-24)

Each element involves a degree of training and skill by the mediator. These components are as follows:

1. Introductory opening statement by mediator
2. Storytelling by victim and offender
3. Clarification of facts and sharing of feelings
4. Reviewing victim losses and options for compensation
5. Developing a written restitution agreement
6. Closing statement by mediator (Umbreit 1995, 143).

Once all these elements are addressed and applied appropriately, it has been suggested that both the victim and the offender experience a fairer and more satisfying means to dealing with their conflict (Umbreit 1998, 21).

Initially, the victim and offender are escorted to opposite ends of the room once entering the mediation setting. The mediator addresses opening comments, and explains his/her role in the process.

It is made very clear that the mediator is not present to determine guilt or innocence; instead he or she functions to facilitate dialogue relating to the perception of events responsible for bringing all the parties together (Arrogo 1998, 638).

Once roles have been clarified, the mediator then chooses which participant is to begin the process. Since the majority of cases that are diverted to mediation are property and public order offences, offenders are generally picked to go first for they were present for the entire violation. Victims sometimes may only feel the after affects of crime since they may have not been around when the violation occurred, such as in property convictions (Arrogo 1998, 638). Each person has five to ten uninterrupted minutes to explain the situation in their own perspective. After the stories have been told, the mediator paraphrases, and summarizes the information in neutral terms to ensure clarification (Arrogo 1998, 638). If both the victim and the offender are actively

involved, the results of this phase can be mutually beneficial. During this stage, a major goal for the mediator is to help break down the stereotypes and related fears that came about from the violation (Umbreit 1999, 224).

Following the dialogue element to the mediation session, the issue of restitution is addressed. "Restitution potentially satisfies the dictates of justice by compensating victims while simultaneously requiring offenders to assume financial responsibility for the consequences of their criminal conduct" (Roberts 1990, 233). In this concluding part of the encounter phase, the victim and the offender through the facilitation of the mediator jointly develop an agreement that is reasonable to both of them. In this agreement, restitution will be addressed and a plan of action to complete the terms will be outlined (Arrogo 1998, 638). If a mutual agreement cannot be reached through the mediation process, then the case is redirected back into the court system for further proceedings (Shenk 2001, 195).

The final phase to the mediation process is follow-up. It is imperative that the mediator keeps in contact with the victim and offender to ensure that the process did have positive outcomes. More so, the mediator needs to be updated on the progress of the restitution that was set out mutually by the victim and offender. Therefore after some time has passed (usually between one and two months) since the completion of the mediation, it becomes the job of the mediator to contact both the participants to see how things are progressing (Arrogo 1998, 639). Again, it is critical to the success of the process that the victims' rights and needs are not neglected to ensure that re-victimization does not occur and this can be avoided through follow-up (Roberts 1990, 237).

In understanding the victim-offender mediation process some social benefits have been addressed. Firstly, victims have the opportunity to have their needs recognized more appropriately, including the chance to seek advice on the confusion created out of the crime. Secondly, providing the victim and the offender a forum to meet face-to-face and hear and communicate their experiences, assists in the reduction of stereotypical images, which in turn reduces fears, stress and anxiety. This benefit of the process is a learning experience for all involved. Finally, since the process has an inclusive element, offenders are more motivated to make things right for they have a stronger sense of what has been wronged (Marshall 1998, 9).

To summarize, restorative justice theory, specifically victim-offender mediation, claims to take into account the needs and rights of victims. This consideration suggests providing an area that promotes a redefinition of justice for those that have been victimized. The process allows the chance for victims to gain control back into their lives by allowing them to express their feelings towards the traumatic experience. To ensure an enhanced understanding of the outcomes to victim-offender mediations a case study has been provided. This particular case exemplifies the positive outcomes that can be achieved from engaging in victim-offender mediation programs, and offers a useful representation of the nature of the process.

Victim-offender mediation: A case study analysis

This case study has specifically been chosen¹⁵ to enhance the understanding of the victim-offender mediation outcomes, and represents how theory is placed into practice.

¹⁵ I had the opportunity in 2001 to participate in an internship program at a specific community based organization. The role of the internship entailed weekly trips to the provincial courts, where the crown and the Community Mediation Services of Downsview (CMS-D) workers and/or volunteers would look over the cases prior to the court proceedings for the day. At this point the Crown would divert appropriate cases

A Story of Victim Offender Mediation

By Robyn Jacobson, Volunteer Mediator, CMS-D, Downsview, Ontario

One evening, many students from a local high school attended a hockey game. At the game, one of the students, Sheryl, had been seen flirting with the boyfriend of another student. The next day, while changing classes, Julie, a friend of the offended girlfriend, had a knife in her hand – and “showed” it to Sheryl “to bother her”. Sheryl believed that Julie was threatening to stab her. The incident was reported to the principal and the police were called. Julie was arrested and removed from the school in handcuffs.

After nearly a year of court appearances, this case was referred to the Conflict Mediation Services of Downsview (CMS-D). Two mediators met with the accused (Julie) and her mother, as well as the victim (Sheryl) and her parents. A surprising fact was that Sheryl and her family did not know that this matter was ongoing and had assumed that nothing had been done by the authorities – a fact that they found quite frustrating considering the serious nature of the incident and the disruption to their family life that resulted. All the parties agreed to attend the mediation.

During the mediation the following disclosures were made. Julie’s mother had been humiliated by the whole episode; that her daughter had been involved in such an incident; that she had been removed from school by the police; that they had to attend court each month; that her colleagues and family might become aware of this. She was ashamed of her daughter’s behaviour. Her life had been disrupted and her employment was in jeopardy because each month she had to take a day off work to attend court.

Sheryl’s mother was also ashamed of her daughter’s behaviour at the hockey game – and as a result had imposed very strict conditions on her and virtually stopped all social arrangements. She was distressed that Sheryl, who was a top student, was no longer achieving at school. She also lived in fear for her daughter’s life – a fear of Sheryl being stabbed by Julie and her gang. This fear resulted in Sheryl’s father driving her to and from school each day, but discreetly dropping her off and collecting her a distance away from the school, so that no one was aware of this protective measure.

During the mediation Julie expressed remorse for the incident and said she would have liked to apologize to Sheryl before but because of a court order, she had not been able to. Both girls expressed how much they had each liked each other prior to the incident and wanted to continue their relationship again. Each set of parents expressed that they thought the other girl was a very nice person and were sorry that this situation had ever taken place.

for mediation. It is then the role of the CMS-D workers to introduce and explain the philosophy of mediation to either the victim or the offender. It should be noted that two staff have to be on hand, so that one can attend to the victim, while the other attends to the offender. It is a general rule to keep the victim and offender in separate ends of the room. Once the process has been explained the participant is asked if they would like to engage in mediation. If a decision of yes has been made, then the staff member is to complete an intake form of the participant’s personal information and their version of the story. If the decision is no, then the case is redirected back to the courts. This internship also provided me with the opportunity to assist as a co-mediator in a few victim-offender mediations.

This case study is of public knowledge; it was published for the Restorative Justice Week 2002: *Towards a Justice that Heals*, Basic Resource Kit. The contact information for CMS-D as found in the resource kit is as follows: **Conflict Mediation Services of Downsview**, 95 Eddystone Avenue, 2nd Floor, Toronto, ON M3N 1H6. (416) 740-2522.

At the conclusion, everyone exchanged hugs and good wishes (Jacobson 2002).

It is apparent in this case study that the outcome of the victim-offender mediation was beneficial to the healing of the two girls and their families. The fears that the victim and her family faced were alleviated and they were able to move beyond the conflict. This particular victim-offender process evidently did have a successful effect on this juvenile case. However, the question remains: does this process more often than not offer a more satisfactory experience and benefits to victims of crime?

Victim-Offender Mediation: *The Shortcomings*

In light of the positive aspects that have been demonstrated in the victim-offender mediation model, some negative themes must also be addressed. These critiques are imperative to the growth and development of the mediation process. In addressing these concerns, practitioners and academics alike have an opportunity to work towards a better system. The goal of the process, as discussed throughout this paper, is first and foremost to ensure the betterment of the victim's experience when dealing with crime and the conflicts that arise out of it. If this first assumption based on victims' needs and rights is not addressed accurately, then the principles and goals set out by victim-offender mediation programs will be unsuccessful.

Umbreit addresses some negative themes within his book Victim meets Offender. Here, he states that while some negative themes have been addressed in regards to the victim-offender mediation process, "their frequency is quite low" (Umbreit et. al. 1994, 97). Although some victims have suggested flaws within their experience with the

mediation process, these concerns were reported far less often than the positive aspects that were experienced by victims¹⁶ (Umbreit et. al. 1994, 97).

One theme that was addressed involved '*mediation lacking authority in assuring completion of restitution and/or inadequate punishment*' (Umbreit et. al. 1994, 97). As discussed within this paper, the notion of restitution is critical in ensuring the high satisfaction rate of victims. When a victim sits down with their offender and together they develop an agreement, there is a belief that the offender will uphold the agreement. It has been found in Umbreit's study that some victims in fact do not receive restitution by the time they expected it, or never receive it at all. This neglect in conforming to the agreement unfortunately leaves the victim feeling hurt and resentful, and placing them in a far worse position than prior to the mediation.

Some of the responses to this negative theme as found in Umbreit's study are as follows: "I was not paid as was agreed, and I have not been contacted about it. I don't know what is going on" (Umbreit et. al. 1994, 97). "There seems to be no mechanism to enforce the agreement made in the mediation session" (Umbreit et. al. 1994, 97). This claim is one that is extremely important, since the mediators do not hold legal power, it becomes a difficult task to ensure that restitution has actually taken place. "Maybe, the mediation people should read from a law book or something to give examples of what would happen if the offender did this again. Offenders should be scared straight regardless of how petty the crime was" (Umbreit et. al. 1994, 97-98). It should be noted that if the restitution agreement is not established, and the victim and/or mediator are sure that it will not be followed through with, the case will be remanded back to court. Here,

¹⁶ Some positive themes have already been addressed within this chapter however further discussion will take place in chapter 3.

the judge will ensure that the restitution agreement is upheld, however, the victim must then turn back to the system that was initially avoided in order to seek compensation¹⁷ (Shenk 2001, 195).

Another area of concern for victims following a victim-offender mediation program was '*dissatisfaction with the mediator*' (Umbreit et. al. 1994, 98). The victims generally discussed their dissatisfaction with the mediator as a twofold: first the style that the mediator engaged in was viewed as inadequate, and second, the mediator was found to be unprepared for the case (Umbreit et. al. 1994, 98).

The role of the mediator as discussed previously is essential to the success of the mediation process. If a mediator's role is too directive, this can lead to a lack of involvement by the offender and victim. Some comments claimed by victim participants are as follows: "The mediator talked a lot, without allowing for the spontaneity of the process or for moments of silence", "The mediator talked too much. The offender hardly said anything", "One of the mediators volunteered some possible solutions for restitution...he pushed too much perhaps" (Umbreit et. al. 1994, 98). If the two in conflict cannot properly discuss the issues, the process is failing to meet its claims.

On the other hand, if the mediator is viewed as too passive, then it may seem as if the mediator has a lack of control over the process which leads to a lack of respect from the participants. Some claims are: "He was kind of quiet, I felt like we needed more direction", "At times she wasn't in control of what was going on" (Umbreit et. al. 1994, 98). The mediator is employed to ensure that the process is facilitated in a neutral

¹⁷ The notion of restitution has been addressed in a positive light as well. This will be further examined in chapter 3 when more thorough evaluations on the completion of restitution agreements will be addressed. It is believed by Umbreit et.al. that in fact restitution is often more complied with when set out through a victim-offender mediation because it is set up in realistic terms that are feasible to be achieved by both the victim and offender (Umbreit, 1994, 111), (Arrogo, 1998, 638-639).

atmosphere, and if this task is not accomplished there is a strong likelihood for failure of the victim-offender mediation (Umbreit et. al. 1994, 98).

Finally, Umbreit found that in some cases '*victims felt coerced into mediation and re-victimized*' (Umbreit et. al. 1994, 99). One underlying principle of the victim-offender mediation model as discussed previously is the notion of voluntary participation. The notion that both victims and offenders voluntarily participate helps to promote the assurance that the process is taken seriously by all involved (Umbreit et. al. 1994, 99). However, as reported in Umbreit's findings, a small number of victims felt coerced into participating in the process. This coercion was found through the diversion of the case from the courts to the mediation process, when victims' informational needs were not often met. As discussed earlier, the victims are unaware of how the system works and are therefore left to the direction of the Crown Attorney and court officials. Consequently, if clarification is not made to the victims, then misunderstandings may arise (Umbreit et. al. 1994, 99).

Jan Bellard an associate with the National Association for Community Mediation, has outlined three additional pitfalls and possible solutions. Her report is a response to certain questions raised by mediation programs in regards to ways of understanding and implementing victim-offender mediation practices and programs appropriately. Bellard suggests: Pitfall #1 is based on insufficient foundation and training of the principles and practices found in the victim-offender mediation programs. This inevitably led to the uncertainty of how policies should be put into place and practiced. In order to avoid this particular pitfall it is important that before a program is developed research and study

needs to take place. Victim-offender practitioners need to visit and evaluate other programs and obtain any major resources available in that field (Bellard 2000, 4).

Pitfall #2 involves the acceptance of inappropriate case referrals (participants coming to the table in bad faith, or cases where there is a significant power imbalance). Accepting unsuitable cases increases the caseload, which may lead to the decrease in quality of service and confusion about the goals and purpose of victim-offender mediation programs. This has also resulted in opposition towards victim-offender mediation programs from victims' advocacy groups. In order to resolve this pitfall, organizations nationally must set up a standard set of guidelines that specify which cases are suitable and which cases should be turned away (Bellard 2000, 4).

Finally, pitfall #3 is encountered when the system is not providing sufficient information to victims and offenders about the resources and options available to them. Courts have been found to declare "do it our way or you don't get your money" (Bellard 2000, 5). The outcomes of this pitfall are similar to those of pitfall #2, and can include a decrease in the quality of service which accordingly leads to confusion and the purpose of these programs. In order to solve this issue programs should look for funding outside of the criminal justice system. This has hopes of changing the way cases are distributed and to make sure they are handled in a more effective manner (Bellard 2000, 5). These pitfalls are detrimental to the success of victim-offender mediation programs and, if they are not acknowledged and reformed, may threaten the viability of alternative justice programs.

It is apparent that there is a need for critique within the restorative justice movement. Furthermore, the issues evaluated by practitioners provide clarification on

concerns that need to be addressed. It is only through continuous practice and modifications that the victim-offender mediation model will have a way to achieve its goals.

Final Remarks:

This chapter addressed the needs and rights of victims of crime. Furthermore, discussions were undertaken of the Canadian legal reforms that have taken place throughout the past few decades in hopes of achieving a higher standard of recognition of victims' needs and rights within the criminal justice system. The assumptions that have been set forth suggest that in order for victims to have their voices heard there is a need for a more victim-sensitive approach, such as victim-offender mediation.

The philosophy and practice of this model have been described while addressing concerns and pitfalls of the process. In addition, an exemplary case model has been included in order to illustrate how theory is put into practice. All of these steps have been laid out to provide a framework for the third chapter, which will identify and analyze the research studies that have been conducted on victim-offender mediations.

Chapter 3

Victim-Offender mediation: Evaluating the Process

This chapter will provide an opportunity to evaluate and contemplate the assessments conducted on victim-offender mediations. The majority of research that will be presented has been conducted by Umbreit et. al. Umbreit has demonstrated the values and positive outcomes that can be achieved through victim-offender mediation through his vast array of studies. It appears that when researching for this particular thesis, all secondary sources used had some link one way or another to Umbreit. The literature indicates that victim-offender mediation has been the predominant model researched and practiced under the restorative justice paradigm. The data provided by these researchers are useful in determining what short-term outcomes occur after engaging in victim-offender mediation. A wide range of studies will be discussed within this chapter, however, the discussion will be focused around and begin by addressing a study by Umbreit et. al. that assessed victim-offender programs in four Canadian provinces. This study provides an overall thorough framework that is representative of the majority of evaluations conducted on victim-offender mediation program.

Assessing Victim-Offender Mediation Programs: The Canadian Experience

In 1995, Umbreit, et. al. produced a research piece that analyzed victim-offender mediation programs in four different Canadian Provinces. This study, “Mediation of Criminal Conflict: An Assessment of Programs in Four Canadian Provinces”¹⁸, has been deemed to be helpful in addressing the experiences of victims after involvement in a victim-offender mediation. While this project does provide the experiences of the

¹⁸ This report was produced by the Center for Restorative Justice & Mediation, School of Social Work, University of Minnesota, and in cooperation with the John Howard Society of Manitoba in Winnipeg, who served as the fiscal agent for this project.

offender in addition to the victim, the data concerning offenders will only be provided in a comparative analysis in this particular thesis. The methodology of this project was based on a 'quasi-experimental design'. This included quantitative and qualitative data collection and analysis techniques. There were also phone interviews conducted with both the victim and the offender two months following the mediation session (experimental group), as well as interviews with those that had their case disposed of (comparison group) by the prosecutor, court, or related agencies. The researchers also underwent observations of actual mediation sessions at the different program sites. The process was further examined by reviewing record data, and further interviewing court officials, program staff and volunteer mediators (Umbreit et. al. 1995, 7).

The participants were made up of a total of 323 complainant/victim, and 287 accused/offenders. This number was broken down to 59% of the complainants/victims that were male, at an average age of 33, and, 86% were white, while the other 14% were minorities. For the accused/offender, 80% were male, at the average age of 24, and, 80% were white, while the remaining 20% were minorities (Umbreit et. al. 1995, 7). The offence that is most commonly referred to the programs is assault, followed by property crimes, such as, vandalism, theft and burglary (Umbreit et. al. 1995, 7).

Program Sites:

The first of the four program sites examined is Calgary, Alberta. In 1985, The Youth Advocacy and Mediation Services Program in Calgary was developed by the Calgary John Howard Society. This organization was initiated in order to provide an arena where victims would have an opportunity to have their needs better expressed and

attended to. Additionally, it provided victims with an avenue to have a more active role within the criminal justice system (Umbreit et. al. 1995, 4).

The second program site that was evaluated was Langley, British Columbia. In 1982, the Victim Offender Reconciliation Program was formed by the Langley Mennonite Fellowship. This development resulted in the implementation of many programs around the Fraser Region Community Justice Initiatives. These community based organizations were founded on the principles of empowering the victim and the offender through facilitated encounter sessions. This program is used in courts in both Langley and Surrey (Umbreit et. al. 1995, 5).

The third program site studied was in the Ottawa, Ontario, region. In 1986, the Dispute Resolution Center for Ottawa-Carleton¹⁹ a non-profit organization, was developed. This program focused on resolving disputes that had been ordered by the Ottawa-Carleton courts. This program stepped in after the police had laid a charge and before the case has been set for trial. Once the Crown deemed the case appropriate for mediation, it was then diverted (Umbreit et. al. 1995, 5).

The final and fourth program site assessed was in Winnipeg, Manitoba. The Mennonite Central Committee Manitoba in 1979 developed the Criminal Court Programs of the Mediation Services agency in Winnipeg. This program was focused on victim-offender mediation programs. "The purpose of Mediation Services is to 'promote peace and restorative justice within the community by empowering people, through education and mediation, to resolve conflicts using non-violent conflict resolution processes'" (Umbreit et. al. 1995, 5).

¹⁹ Whereas the three other programs are specifically understood as victim-offender mediation programs, the Ottawa program identifies itself within the context of criminal court mediation programs (Umbreit et. al, 1995, 3).

The program characteristics were all very similar across the four sites²⁰, and extended to the budgets, with Winnipeg consuming a little more than the other three, based on its larger size. Additionally the number of staff was similar in size with the exception, once again, to Winnipeg, who hired more staff based on their higher numbers.

Results & Findings:

The results in this study suggested that there were higher levels of voluntary participation in the process, fairness within the process and the development of the restitution agreement and less fear of re-victimization from the same offender after participating in a victim-offender mediation, all of which, in turn, led to a higher level of satisfaction (Umbreit et. al. 1995, 17). The findings related to high levels of client satisfaction and perceptions of fairness with victim-offender mediation programs observed in this study corresponded with previous findings that emerged in the United States (Coates and Gehm; Galaway 1988; Gehm 1990; Umbreit 1989, 1991, 1994; Umbreit and Coates 1993) and in Europe (Dignan 1990; Marshall and Merry 1990; Messmer and Otto 1992)²¹. Further, “the quality of justice experienced by complainants/victims and accused/offenders can be significantly enhanced through expanded use of mediation in criminal conflicts” (Umbreit et. al. 1995, 17).

These studies, therefore, have reported positive outcomes from the victim-offender mediation programs. The diagrams that will be illustrated provide conclusions that offer insights into the outcomes of victim-offender mediations. Furthermore, these particular tables represent what is believed in this thesis to be the most important components that must be addressed in order to ensure sensitivity towards victims and their needs.

²⁰ Refer to Appendix # 3

²¹ Some of these additional research reports will be addressed through out the sections of this chapter.

Voluntary Participation:

It is essential that participation is regarded as voluntary for this is one of the underlying assumptions to restorative justice generally, and the victim-offender mediation model in particular. The issue at hand is whether victims are, in fact, truly participating in a voluntary process, or are they somehow being coerced (community responsibility, lack of knowledge of other options available, etc.) into participating. If coercion does take place then one of the founding principles of the process ceases to exist, thus potentially undermining healing (Gehm 1998, 9).

Guaranteeing voluntary behaviour by the victim is difficult. It takes time and patience by the practitioners, as well as ensuring that a thorough explanation of the process is provided to the victim. The victims need to make an informed choice of whether they want to participate in the process. If there is an element of resistance from either of the participants then the positive effects of the model will have no opportunities to develop and restore (Llewellyn & Howse 1998, 42).

In reflecting on the data presented by the four Canadian Provinces, the study shows that the goals set out in the victim-offender mediation model in regards to voluntary participation are upheld. This is indicated in the table below. 90% of the victims in this study reported high levels of voluntary participation through the mediation programs (Umbreit et. al. 1995, 11).

Voluntary Complainant/Victim Participation in Mediation

	Combined	Calgary	Langley	Ottawa	Winnipeg
Voluntary (%)	89.7	100.0	92.1	86.8	89.1
Involuntary (%)	10.3	0.0	7.9	13.2	10.9
n=	157	7	35	33	92

(Umbreit et. al 1995, 11).

As specified, the report claims that the participants in the four programs studied had an initial high-quality experience with the process based on their voluntary participation.

Voluntary Participation: *Additional Findings*

Many studies have been conducted on the victim-offender mediation process throughout the world, especially the United States, Europe, Australia and New Zealand. These cross-cultural research reports have proven to be useful in determining the success rate of the process. It is therefore critical to this thesis to briefly review the outcomes of these projects to see if the conclusions concur with the outcomes found in *The Four Canadian Provinces Assessment* as demonstrated above.

In alternative studies the findings indicate that the majority of respondents to the victim-offender mediation process are those affected by property crimes²² (Umbreit 1996, 4).

In a study (Neimeyer & Shichor 1995) of the VORP program in Orange County, California, representing the largest victim offender mediation program in North America with over 1,000 referrals a year, found that 75% of victims of minor property and personal offenses were interested in participating in the mediation process (Umbreit 1996, 4).

Subsequently, in 1994, Umbreit produced a large multi-site project where he reported that, if given the opportunity, 70% of the respondents who had not been referred to mediation would have wanted to meet the juvenile offender (Umbreit 1996, 4). However, due to the inefficiencies surrounding referrals to the mediation setting, victims are often unaware of the alternative form to seeking justice, thus resulting in an inability to exploit

²² Such academics that have reported on this are: Coates & Gehm, 1989; Gehm, 1990; Galaway, 1988; Marshall & Merry, 1990; Umbreit, 1985, 1989

it as a resource. It is therefore necessary for the court to inform and divert cases that are appropriate for the mediation model (Wemmers 2002, 44).

In Minnesota, a state-wide public poll revealed that 82% of citizens, many of whom had been victims of crime, suggested that they would be willing to participate in a mediation with young juvenile offenders, as well as adult offenders, under the conditions that the crime was a non-violent property crime (Umbreit 1996, 4).

Conversely, the majority of the data presented regarding participation rates continue to be similar amongst each other by suggesting that the voluntary participation rate is in fact high. It is at this point that the next element will be addressed in determining the experience of victims. This next factor of the victim-offender mediation model is that of victims' fear of re-victimization. It is necessary to determine if victims feel less fear of crime and anxiety after the mediation, once communication has been sought and issues have had a chance to become clarified, or whether there is a sense from the victims that further victimization will occur from the process due to the close proximity to the offender.

Fears of Re-victimization:

One important element to the restorative justice initiative is to help alleviate uncertainties and threats that developed after the violation and that could lead to fears of re-victimization. Since the victim has already been caused trauma due to the violation, it becomes imperative to help ensure that further victimization does not occur. It has been suggested in previous chapters that the criminal justice system does in effect further victimize some victims. Victims' experiences are ignored and they are not involved in resolving their conflict. The criminal justice system is set out only to resolve the criminal

act, through punishment, yet the system does not provide an avenue to resolve the issues and concerns that have arisen due to the violation (Cohen 1998, 3).

It has been suggested and recommended by restorative justice academics and practitioners that the victim-offender mediation model helps to reduce the post-victimization anxieties associated with the crime. This reduction is accomplished by allowing the victim to clarify their concerns and questions through facilitated dialogue with the offender. Certain fears develop after one has been victimized and the victims now have the forum to seek answers and put some control back into their lives. For example, the ability to ask the offender “were you watching me, or was it a random act?” can put plenty of perspective to a very confusing and out of control situation.

It is necessary to discover if fear is reduced and the anticipation of re-victimization is alleviated. *The Four Canadian Province* study established that fear of being re-victimized by the same offender was reduced by part in a victim-offender mediation as 11% of victims who participated in a victim-offender mediation, remained fearful in comparison to the 31% who chose not to participate in a mediation. This data was most relevant in the programs of Ottawa and Winnipeg (Umbreit et. al. 1995, 15).

Additionally, 53% of the victims that attended the mediation claimed that they had less feelings of anger and upset upon the completion of the session, in comparison to the 66% of the victims that were recommended to participate in the mediation, yet chose not to (Umbreit et. al. 1995, 15). The research can be exemplified in the following table:

Fear of Re-victimization by Accused/Offender

	Combined Sites*		Calgary		Langley		Ottawa*		Winnipeg*	
	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.
Yes (%)	11.2	31.1	0.0	0.0	19.5	27.8	2.6	27.3	12.1	34.7
No (%)	88.8	68.9	100.0	100.0	80.5	72.2	97.4	72.7	87.9	65.3
n=	178	132	7	2	41	36	39	22	91	72

(Umbreit et. al. 1995, 15).

It has then been confirmed in Umbreit et. al.'s research that victims do feel a sense of relief from being further violated by the same offender after participating in a victim-offender mediation. It is believed that through the use of dialogue and communication victims are able to clarify many concerns and issues, which then provides them with alternative conclusions other than stereotypical assumptions. Some victims have been documented as stating "It is very unlikely that he'll do another crime against me, but I would have never have known that if it hadn't been for mediation", "I've gotten some questions answered. Was assured and put at rest re: offender wanting to victimize me personally" (Umbreit 2000, 28). By meeting and humanizing the offender, the conflict or violation takes on a whole new perspective, and thus provides an avenue for the victim to move on with their lives without the nagging fear of being victimized by the offender again (Umbreit et. al. 2000, 28).

Interestingly, where Umbreit does evaluate the issue of fear of re-victimization, he seems to focus directly on the fear of being re-victimized by the same offender. This evaluation is superficial in its approach for it is not the fear of the same offender re-victimizing the victim that should be considered, but instead the fear of being re-victimized in general should be investigated. When a violation occurs, the fear that emerges is far grander than the crime in itself.

Fear of crime produces a loss in personal well-being and leaves people anxious. The consequence of fear of crime, therefore, is liable to be its negative effect on people's subjective quality of life. Poor subjective quality of life has been tied, in turn, to poor physical and mental health, poor role functioning, and reduced social participation, all of which can have widespread social consequences (Adams & Serpe 2000, 606).

The trauma and feeling of violation can lead to many future personal conflicts, and by suggesting that there may only be a fear of the same offender seems to undermine the conception of re-victimization (Adams & Serpe 2000; Robinson 1998). Nonetheless, alternative research needs to be conducted to determine the level of fear of re-victimization from offenders in a general context.

Fears of Re-victimization: *Additional Findings*

In further studies the results and conclusions seem to be similar to the Canadian study. Yet unfortunately these supplementary studies still continue to only evaluate fear of re-victimization by the same offender. In 2000, Umbreit et. al. commented:

The percentage of victims reporting fear of re-victimization ranged from 6% to 16% in VOM studies across U.S., Canadian and English sites (Umbreit 1991; Umbreit 1994; Umbreit 1995; Umbreit & Roberts 1996). In the latter two countries, victims who went through mediation were half as likely to express fear of re-victimization than a sample of victims who did not go through mediation. In the U.S. study, reduction in fear was looked at by interviewing victims both before and after the mediation. Prior to mediation 23% of victims reported being fearful of further re-victimization by the offender; after the mediation the portion expressing such fears (10%) was reduced by more than half (Umbreit et. al. 1994). In addition, Umbreit & Bradshaw (1997) found that victims of adults were more fearful that the offender would re-offend than victims of juveniles (Umbreit 2000, 28).

In sum, it appears from the evaluations that victim-offender mediation does help to reduce the fears of re-victimization by the same offender. This reduction is accomplished

through the communication and interaction of the victim with the offender including the help and facilitation of the mediator. Yet the fear of re-victimization from another offender is yet to be examined.

Fairness within the Process:

Fairness is an important concept considered when dealing with victims as well as offenders. Restorative justice principles claim to ensure a fairer means of achieving justice through accessing the victim-offender mediation model. Allowing victims an opportunity to express their feelings, and to become involved in creating a resolution, provides an arena that promotes fairness to its participants.

Three issues that have been raised by victims concerning fairness include “1) Providing help for the offender; 2) Paying back the victim for losses; 3) Offering an apology to the victim” (Umbreit et.al. 1994, 83). It is important that other critical factors are considered in order to ensure that fairness is provided. Therefore it is necessary to help reform the offender, while at the same time ensuring that restitution is made to the victim. Subsequently, victims have reported that they want to see the offender take responsibility and show remorse for their wrongdoing (Umbreit et. al. 1994, 83).

The Canadian study produced by Umbreit suggests that victims do find the restorative approach of victim-offender mediation to offer a fairer means to handling the crime as well as its outcomes. Therefore it was concluded that 80% of victims who were referred to and participated in the mediation found it to be successful, due to its level of fairness, in comparison to 43% of victims that were referred to mediation but chose to use the criminal justice system instead (Umbreit et. al. 1995, 12). These results can be exemplified as follows:

Complainant/Victim's Perception of Fairness in Justice System

	Combined Sites*		Calgary		Langley		Ottawa*		Winnipeg*	
Perceived:	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.
Fair (%)	79.9	42.7	42.9	50.0	63.2	48.6	87.8	42.1	86.4	39.7
Unfair (%)	20.1	57.3	57.1	50.0	36.8	51.4	12.2	57.9	13.6	60.3
n=	174	124	7	2	38	35	41	19	88	68

(Umbreit et. al 1995, 12).

Further, when investigating how victims felt after the completion of the development of the restitution agreement, 92% of the victims suggested that it was fair (Umbreit et.al. 1995, 12). This combined effort between the victim and offender, facilitated by the mediator, is one of the main components of the process that is trying to exemplify a fairer experience in dealing with the criminal violation. Umbreit's study suggests the following data.

Complainant/Victim's Perception of Fairness of Agreement

	Combined Sites*		Calgary		Langley		Ottawa		Winnipeg	
	To Comp/Victim	To Accused/Offender	To Comp/Victim	To Accused/Offender	To Comp/Victim.	To Accused/Offender	To Comp/Victim.	To Accused/Offender	To Comp/Victim.	To Accused/Offender
Fair (%)	92.4	93.4	80.0	100.0	88.6	82.3	97.6	100.0	92.0	94.3
Unfair (%)	7.6	6.6	20.0	0.0	11.4	17.7	2.4	0.0	8.0	5.7
n=	170	166	5	5	35	34	42	40	88	87

(Umbreit et. al 1995, 13).

As indicated by the table above, participants tend to express relatively high levels of satisfaction with the degree of fairness characterizing the creation of restitution agreements. The fact that the victims have had an opportunity to express their experience and participate in the outcome has proven to provide a higher level of fairness.

Nonetheless, where Umbreit demonstrates the high levels of fairness from developing the agreement, he does not touch on the overall completion rates of these

agreements. If these restitution agreements are not fulfilled and carried out as promised, the experiences and levels of fairness felt by the victims may indeed be altered. It is one thing to put together an agreement, and it is another to see it followed through completely. It is hard to determine what this outcome may be since there is very little longitudinal research that report on these findings.

In addition, there was minimal discussion on the fairness of the mediation process. It is important to distinguish between the actual fairness of the process in comparison to the fairness of the restitution agreement. This lack of data leaves certain important questions unanswered, resulting in a lack of information presented in this area of the study. In order to seek further clarity on respondents' perception of fairness from the process, other studies were turned to within the next section.

Fairness within the Process: *Additional Findings*

A 1989 Minnesota study by Umbreit found that 80% of the victims that went through the mediation process were indicated to have found a fairer means of obtaining justice, in comparison to 38% who dealt with their matters through the criminal justice system (Umbreit 2000, 31).

(Umbreit et. al. 1994, 84).

This data illustrates that 83% of the victims in the mediation group reported that there was a high level of fairness in having their case dealt with. This was in comparison to the 53% in the referred-but-no-mediation group, and the 62% from the non-referral-to-mediation-group (Umbreit et. al. 1994, 84).

In addition, Umbreit conducted a research assignment looking into four American States to determine the level of fairness from victim respondents. The findings suggest that in all four program sites the participants had an increased feeling of fairness with the victim-offender mediation process.

**Victim Fairness Perception by Site
(Case Processing by Justice System)**

(Umbreit et. al. 1994, 86).

The role of the mediator is crucial in ensuring fairness of the process towards the participants. In Umbreit's study the majority of respondents suggested that their experience of fairness from the process due to the facilitation of the mediator as high. The respondents reported that the mediators remained unbiased and non-judgmental towards each party. The mediators were also reported to have listened with an open mind and offered useful suggestions:

Fairness of Mediator

(Umbreit et.al. 1994, 89)

It therefore seems that the majority of respondents attending and participating in the victim-offender mediation actually did find mediation to be more fair and beneficial. Nonetheless, it becomes necessary to determine if the restitution agreements set out by the parties and facilitated by the mediator were completed by the offender. If restitution is not completed, as suggested earlier, then the consequences for the victim can lead to further unfair treatment, and in turn will prove to be the antithesis of what the process is trying to accomplish. It is the notion of restitution that will be examined in order to determine if the agreements are completed or in fact ignored once the mediation is completed.

Restitution Agreement:

The Canadian Four Province study which has been used as a guiding example throughout this chapter unfortunately does not address the issue of restitution completion. It is unclear why Umbreit chose not to evaluate or discuss restitution in this research project. He does discuss the perceived fairness of the development and outcome of the restitution agreement, yet he does not further elaborate on this issue. It is imperative to any assessment of victim-offender mediation programs that levels of completion rates of

restitution agreements be evaluated. However, as noted previously, if there is no data to determine rates of completion, then a big part of the puzzle is still missing. Conclusions cannot accurately be made if we are not assured that these agreements are being completed for the majority of the cases.

Although this concern is not mentioned in this particular *Canadian Four Province* study, it must to be addressed in order to realistically evaluate victim-offender mediation programs. As noted in Chapter Two, the notion of restitution is imperative to the restorative process.

The symbolic value of compensation lies in the fact that it recognizes the losses suffered by the victim. In addition, if the offender pays the compensation, it also recognizes the offender's responsibility for those losses (Wemmers 2002, 45).

In 1994, Umbreit presented data that reflected the perception of fairness from the restitution agreement for the victim. He indicates that 9 out of 10 respondents felt that the agreement was fair. In addition, it demonstrated that 93% of the offenders also felt that the agreements developed were achievable. This is illustrated below:

Fairness of Restitution Agreement to Victim in Mediation

(Umbreit et. al. 1994, 87).

Umbreit has also established the rates in which restitution agreements are completed in comparison to court ordered restitution agreements. These findings are specified in the following chart:

(Umbreit et. al 1994, 111).

This example demonstrates that in fact the restitution agreements are more closely followed and completed in the context of victim-offender mediation. Restitution is an important component in helping to bring victims lives back to some form of normalcy. Through the cooperative approach that is set out by the mediation process, the victim and offender are expected to create an agreement that is realistically possible to complete (Umbreit et. al. 1994, 97).

In addition, the following conclusions have been informed by Latimer & Kleinknecht's research project prepared for the Canadian Justice Department. This study has provided the following inferences in regards to restitution.

- In a national survey of 116 victim-offender mediation programs in the U.S., extensive phone interviews with program staff indicated that in 87% of cases a restitution agreement was reached, with a 99% completion rate
- In a preliminary evaluation of victim mediation programs in California, researchers found that of all cases in which an agreement was reached, 97% of the contracts were completed

or currently still active. The small number of failures were exclusively from cases dealing with property offences, rather than more serious crimes against the person (Niemeyer & Shichor 1996) (Latimer & Kleinknecht 2000, 14).

Moreover, the study claims that victims' satisfaction levels are largely determined by the completion of restitution agreements (Latimer & Kleinknecht 2000, 13). The notion of completion rates is imperative to the satisfaction level of the victims, yet many of these studies do not explain what completion is suggesting. For example, is it the completion of the development of the agreement, or, conversely, is it the completion of the agreement in its entirety. This point needs to be clarified by the researchers in order to ensure practical evaluations are being presented.

The final section of this chapter investigates the satisfaction rates of victims from the mediation experience. This area is the most important factor in establishing the research question at hand. Therefore, the main analysis will try to verify whether the victim-offender mediation process does in fact address the needs of victims, which successively provides them with a better alternative to the criminal justice system.

Victims' Satisfaction:

To reiterate, the satisfaction level of the victim is imperative to the success of the mediation. This can be achieved by allowing the victim to feel that their voice and experiences are taken into account, and further their opinions in the matter are relevant and important. Additionally, the mediation needs to provide an arena where the victim can work together with the offender and the mediator to produce a restitution agreement that meets the victim's needs and is attainable for the offender. If these goals are accomplished, it has been suggested that the satisfaction of the victims does indeed improve (Umbreit 1998, 21).

The following are remarks of victims that participated in the victim-offender mediation process: “I was allowed to participate and I felt I was able to make decisions rather than the system making them for me”. “The mediation made me feel like I had something to do with what went on...that justice had been served”. “I liked the personal quality of mediation...it made me feel less like a victim, but still a victim” (Umbreit 1998, 21). The involvement of the victim within in the mediation process should result in an increase in their satisfaction rates as indicated by the restorative justice principles. This assumption continues to remain true as exemplified in the *Four Canadian Provinces* study.

It was found that within the separate sites, the victims’ satisfaction with the mediation outcome varied from 82% in Langley (N=38) to 100% in Calgary (N=7) (Umbreit et. al 1995, 11). This slight range in averages amongst the provinces is never elaborated by Umbreit. It would have been beneficial to the reader to have some reasoning behind these satisfaction results, instead it is left open for questioning. The levels of satisfaction are imperative to the success of the victim-offender mediations, and without close review and explanation on the contributing factors to the outcomes, rich and clear understandings are left to be attained.

Complainant/Victim Satisfaction with Outcome

	Combined	Calgary	Langley	Ottawa	Winnipeg
Satisfied (%)	89.3	100.0	81.6	92.9	90.0
Dissatisfied (%)	10.7	0.0	18.4	7.1	10.0
n=	177	7	38	42	90

(Umbreit et. al. 1995, 11).

This data is in comparison to the satisfaction level found by victims who were involved in the criminal justice system. This table suggests that all four provincial programs had a

higher level of satisfaction rates from victims who participated in the victim-offender mediations in comparison to victims who accessed justice through the criminal justice system.

**Complainant/Victim Satisfaction With Criminal Justice System
(Comparing Mediated to Non-Mediated Cases)**

	Combined Sites*		Calgary		Langley*		Ottawa		Winnipeg*	
	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.	Med.	Non-Med.
Satisfied (%)	78	48.0	86.0	100.0	58.0	57.0	85.0	52.0	82.0	41.0
Dissatisfied (%)	22.0	52.0	14.0	0.0	42.0	43.0	15.0	48.0	18.0	59.0
n=	178	134	7	2	40	37	41	21	90	74

(Umbreit et. al. 1995, 10).

As demonstrated above, the satisfaction rate of the outcome for the victims proves to be higher in comparison to dealing with the criminal justice system. In addition, it would have been beneficial to this study if more evaluation was presented on satisfaction rates, specifically based on the process. There is more data reflecting the satisfaction of the outcome, but not the actual process. Data reflecting the satisfaction level from the process will be illustrated below.

Victims' Satisfaction: *Additional Findings*

The satisfaction level of victims is a strong determinant of whether the victim-offender mediation is a better way to deal with conflict resulting from victimization. Umbreit et. al illustrate their 1994 findings in the following diagrams.

**Victim Satisfaction
(Case Processing by Justice System)**

(Umbreit et. al. 1994, 76).

**Victim Satisfaction by Site
(Case Processing by Justice System)**

(Umbreit et. al. 1994, 77).

These graphs show that upon participating in a victim-offender mediation the satisfaction levels of victims increase in comparison to those victims that chose not to participate in the mediation process.

Further, Latimer & Kleinknecht have noted some findings in regards to victims' satisfaction from the victim-offender mediation process. These conclusions are:

- Umbreit, Coates and Kalanj (1994) found that 79% of mediated victims were satisfied with the processing of their case compared to 57% of the victims within a court sample.
- In their interim report of victim-offender conferencing program for young offender in Washington County Minnesota, Umbreit and Fercello (1997a) found that all the victims were

satisfied with the handling and the outcome of their cases. Moreover, 100% of the victims felt that the restitution agreement was fair for them and 80% felt the agreement was fair for the offenders (Latimer & Kleinknecht 2000, 11).

Once again it appears that the outcomes of the many research projects are similar. In sum, the conclusions that have been suggested and documented explain that upon the inclusion of the elements brought forth above, the satisfaction rate of victims from the mediation process are high. Again, this satisfaction is based on the acknowledgement of the victims' experiences and needs. Further, their involvement in the process, including the development of the restitution agreement, helps to provide a higher level of satisfaction than that found from the criminal justice system.

It is this higher level of satisfaction that proves that the alternative means to dealing with justice, namely victim-offender mediation, does in fact serve the needs and rights of victims. Therefore, it seems appropriate to conclude at this point that the restorative principles set out in the victim-offender mediation model do provide a better means to dealing with conflict created by crime. The model allows for victims to become involved in a process that is essentially theirs. While simultaneously, addressing the needs and the concerns of the victims through the acknowledgment of their experiences and their contribution in the development of the restitution agreement (Gehm 1998, 15). All these individual components combined provide an alternative system that works for the betterment of the victims (Cohen 1998, 3).

Concluding Remarks:

These studies have offered many important insights into the experiences of victims through using the restorative principles of victim-offender mediation. In reviewing the different outcomes found by victims in the areas of voluntary participation,

fears of re-victimization from the same offender, fairness within the mediation process, and the completion of the development of the restitution agreement, it seems clear that increased rates of victims' satisfaction can be achieved from the process.

Now that some illustrated outcomes have been presented, it will become the task of Chapter Four to compare and relate the philosophy of restorative justice to victim-offender mediation programs. Where data has been presented, it is also important to challenge and critique the restorative process in order to ensure that the goals presented are, in fact, realistic and are realizable by practitioners.

Chapter 4

Restorative Justice & Victim-Offender Mediation: Are the goals being met?

The goal of this chapter is to investigate the issues surrounding the victim-offender mediation model. These implications must be addressed in order to determine whether this alternative approach operates more efficiently and successfully than that of the present criminal justice system. Certain concerns will be looked at in turn to decipher if these issues are hindering the restorative practices of victim-offender model by causing more harm than good.

Restorative Justice: The Limitations

Reflecting on limitations is a useful tool for strengthening the development of the restorative justice paradigm. Marshall has outlined certain limitations that need to be recognized in order for the notion of restorative justice to properly meet its goals.

The first limitation that will be discussed is voluntary cooperation/participation. As noted previously, the notion of voluntary participation is a key element to the success of the process. If the victim or the offender is coerced into participating, then the principles of the restorative model will not and cannot occur. Some critics believe that the Crown and victim-offender mediation program administration can coerce offenders into participating by using the 'victim-offender dilemma', that is, by "exploiting uncertainty about the likelihood and severity of punishment in the criminal court system" (Brown 1994, 11). This 'victim-offender dilemma' persuades offenders not only to participate in mediation, but may also push them towards a restitution agreement (Brown 1994, 11). It has thus been argued by some critics that the restitution agreements may not

be entirely based on cooperation, but instead are motivated by anxieties regarding a possible return to the criminal court system (Brown 1994, 11).

In contrast to this argument, a number of researchers suggested (Roach 2000; Marshall 1998; Umbreit 1994, 1997, 2000) that it is far more difficult to face the one you have victimized, than taking responsibility and paying back restitution directly to the wronged party. Having to answer questions from the victim, and justifying their behaviour, has been deemed to be far more severe a punishment for offenders than dealing with the court system. Through identifying and hearing the experiences of the victim, the offender is left with a realistic picture of the effects of their criminal behaviour. This interaction is intended to hit home and leave the offender to think twice before causing a violation again (Roach 2000, 260).

As exemplified in Chapter Three, the majority of participants are engaging in mediation on voluntary grounds. As summarized by Marshall:

Experience has indicated that the majority of individuals offered a chance of participation would like to do so and the rate of agreement is also high. Later failures to carry out agreements are, moreover, much lower than failures to pay fines or compensation ordered by the court. Restorative practices are by their nature more accessible and attractive to individuals because they provide them with flexibility for manoeuvre and are more easily understood than legal procedures. They also offer benefits that the formal system does not, or does less certainly (Marshall 1998, 5).

It appears from Marshall's summary that if offered the opportunity, victims and offenders are willing to voluntarily participate in the mediation programs based on its accessibility and flexibility. Nevertheless, the accessibility and convenience of this model has the potential to undermine its clientele if inappropriate cases are accepted and put through the process.

Unsuitable cases reflect a number of problems such as power imbalances, bad faith, or histories of violent encounters between the parties (Clark Country 2000). Certain selection factors must be taken into account when considering which cases are appropriate for the mediation context. The acknowledgment of the offence and the level of remorse presented by the offender are imperative in distinguishing which cases are deemed appropriate for the mediation setting. The offender must be willing to accept and recognize their responsibility for their offence, and further want to make things right. If the offender denies accountability, and does not validate the experiences of the victims, then the case would not be considered suitable for the mediation setting. Not validating the victims' experience and needs following the violation only results in further disregard and frustration for the victim (Clark Country 2000).

Another important issue that can affect the case selection process are the specific issues or concerns that are brought about and need to be resolved due to the violation. "The VOM process needs content. There need to be reasons why the parties want to meet. The reasons/issues/concerns do not need to be concrete (e.g., restitution)" (Clark Country 2000). As long as there is appropriate reasoning behind why the victim and the offender want to meet (want to ask questions, share impact, and look for a future outcome etc.), then the case should be suitable. However, if there are no tangible reasons or concerns, then the mediation process has limited means of helping to resolve the conflict, since there are no concrete issues to be discussed and worked through (Clark Country 2000).

Counselling issues are also relevant. Some cases involve on-going relationships that need far more attention than can be offered in a mediation setting. For example, those

cases that involve a history of repetitive abuse such as a teen to parent assault or vice versa are not suitable for the mediation context. These specific cases instead need intensive long-term counselling that can not be accessed in the mediation environment, considering that mediators are not skilled in therapy (Clark Country 2000). Furthermore, if violations result in victimless crimes, then they too would not be appropriate for mediation.

Minors in possession of alcohol, minors in possession of tobacco, runaways and some motor vehicle violations are examples of cases that do not generally work well for VOM as there is no individual party injured...(Clark Country 2000).

Therefore, cases that require extensive counselling, or do not have two parties in direct conflict would not be well suited for mediation since the needs of the people involved are greater than the process can manage successfully. Only when programs realize that they cannot take on all cases that are directed their way, will the needs of both the victim and the offender be met.

This example of the case selection criteria was chosen as it offers some constructive direction regarding which cases are appropriate for mediation, and which are not. It is imperative that practitioners of this process remain true to the goals and principles set out by the restorative justice model, specifically victim-offender mediation. This can only be achieved by processing those cases that are suitable and reflective of the mediation context. If practitioners move away from these objectives, with good intentions or not, the outcomes will inevitably fail the victims as well as the offenders. This will result in the same frustrating outcomes that are found from the criminal justice system.

In addition, victim-offender mediation has often been suggested to take what are known as the easy cases or 'garbage cases' eschewed by prosecutors as unworthy or

unimportant. This rejection by the legal system further marginalizes victims for it appears that their case is irrelevant and undeserving of the court's time. The courts' inability to view all cases as equally important leaves victims feeling that their violation is less meaningful, in comparison to other cases involved in the system.

Further, the need to establish mediation programs as an acceptable practice has led some organizations to take on cases that are deemed inappropriate for the mediation. The justification surrounding this issue is centered on the concern that if the programs do not process enough cases, their relevance and viability may be questioned, encouraging the marginalization of the mediation programs (Umbreit et. al. 1994, 159).

The importance of determining appropriate cases through case referral is necessary for the practical progression of the victim-offender mediation model. These referrals, which should be scrutinized based on the case selection criteria, are often recommended by the criminal justice system. Insofar as these recommended referrals come from the criminal system, it is crucial that the mediation organizations have good working relationships with the police, probation offices, Crown counsel and judges. Given the centrality of this association in victim-offender models and programs, it, too, has been an area of valid debate.

Restorative justice is premised on the assumption that it would be an alternative to the present criminal justice system whenever viable. Accepting cases from the criminal court system, it is believed that it may lead to further social control through net-widening (Umbreit et. al. 1994, 159). Claims have been made that cases that are deemed minor and would be dismissed in court are now, instead, turned over to mediation. Thus minor cases which would not have obtained official sanction are now doing so. As a result, it is

criticized that restorative justice is actually creating more “crimes” than reducing them, simply by offering another forum in which they may be processed. In addition some critiques have postulated that the attention that is given in the victim-offender mediation can in fact result in far harsher outcomes on the offender than if left to the resources of the criminal justice system. In other words, where a case may have been thrown out by the court system, with no consequences or retributive outcomes, the offender is now instead in a position of receiving a punishment that they otherwise would have not (Delgado 2000, 755).

It should be noted that regardless of the degree of severity of the violation, the offender should not get off without consequences as might happen in having their case dismissed. What may be perceived by the courts as insignificant crime may in fact be a huge violation for the victim. If the case is to be thrown out, what does this say to the victims? Well, it seems to place the victim in a compromised position. At least in participating in the victim-offender mediation, the offender has to take responsibility and try to correct the wrong that has been done.

Criticisms of net-widening have been accompanied by concerns over the costs associated with alternative programs. For example, it is assumed that victim-offender mediation will increase overall cost, based on its lengthy and interactive processes (Umbreit et. al. 1994, 159). It should be noted, however, that there have not been enough valid evaluations done at this time to confirm whether the programs are indeed too costly. Furthermore, it has been suggested that if mediation is used appropriately to ensure the increased satisfaction of the participants through meeting both the victim’s and offender’s needs as well as addressing the notion of reintegration for the offender, and concluding

with an appropriate restitution agreement, such benefits may well outweigh the costs (Roach 2000, 257). As long as both the victim and offender are offered an opportunity to become more involved within their process, and have a chance at resolving the conflicts that arose out of the violations, then it seems fair to maintain these alternative programs regardless of the issues of costs. Therefore, the government needs to take on an active role in the funding of these programs.

Restorative justice practices cannot be engaged without some level of contribution from the government, at least at this particular point in time. The question at hand is how much involvement and, further, who decides and controls the amount of participation? Restorative justice practitioners need the government to work with the programs in order to increase the successful progression of the movement. The government is in the position to facilitate and make necessary changes to aid in the implementation and successful running of the restorative justice programs. Further, the exclusion of the government would unavoidably result in the loss of well needed resources and funding (Llewellyn & Howse 1998, 68).

If the government and restorative practitioners pull together by collaborating their knowledge and skills, the potential to realize a better form of justice will be enhanced (Llewellyn & Howse 1998, 69). Furthermore, without the support of the government through resources and funding, the resolutions that are developed in mediation would be difficult to maintain. A lack of funding may result in programs cutting corners and consequently not providing the best quality service for its participants. For that reason, it is only through the integration of the criminal justice system and the mediation programs that some positive change may be accomplished (Llewellyn & Howse 1998, 69).

Another important basis for the co-existence of the two systems resides on the predictability and consistency of the legal structure. In ensuring some government interaction, the state will be able to ensure that standards and proper legal methods, including the protection of rights are met within the victim-offender mediations. This protection of victims through the maintenance of proper legal procedures will benefit victims by ensuring the security of their legal rights (Llewellyn & Howse 1998, 69).

Governments can play an important role in developing legislation, policies, and guidelines, forming partnerships between groups, and providing information, research, and technical support to communities. Governments will also have to consider the amount of funding that is necessary to develop and sustain these programs (A Consultation Paper 2000, 10).

The issues and concerns that have been raised concerning victim-offender mediation will be helpful if they are addressed in a manner which helps the programs to be more effective and sustainable. In order to achieve this goal, it is important to challenge and critique the methods that were used to support the findings as suggested in Chapter Three. This analysis can be attained through reviewing and confronting the evaluations that have been addressed. In other words, do the evaluations on victim-offender mediations provide a fair assessment of the victim's needs and satisfaction levels? It is in this next section that these issues will be discussed.

Restorative Justice: *Does it work?*

Evaluation is imperative to understanding how and whether restorative justice initiatives, specifically victim-offender mediation programs work, and what they have to offer the public. A broad sample of these evaluations were presented in Chapter Three in order to achieve a clear perception of these programs' effectiveness in meeting their stated goals. In addressing the data in these evaluations, some concerns were expressed

regarding elements that have not been evaluated or are yet to be discussed. It is critical that further investigation engages a wide scope of questioning and assessment. Some of these particular questions will now be focused upon, for they are imperative to helping researchers compose and manage the most relevant and practical evaluations.

Evaluations of the participants help practitioners and researchers to appreciate the personal experiences and feelings that the participants underwent in the mediation process. These methods for accessing are useful, yet if they are not administered appropriately, then they ultimately are not accomplishing the most realistic outcomes and responses.

The first issue is exploring “who should conduct the interviews or evaluations?” It has been recommended that those with high stakes in the success of the mediation (such as the mediator) should not be involved in the accumulation of data. These persons may be approaching the interviews/evaluations with favouritism for the process which in turn may influence the outcomes and results. It is best to involve a person who has no vested interest in the outcomes to conduct the interviews, for they can present results in a fair and unbiased manner. These assigned persons need to be well versed in the philosophy of the model, and further, sensitive to the needs of both victims and offenders. Mock interviews should also take place to ensure that proper interviewing etiquette is occurring (Umbreit et. al. 1994, 211).

Secondly, the issue of “when should the post-mediation interviews occur” needs to be looked into. Interviews for this type of research need to be conducted in an appropriate and timely manner. If the interviews are conducted too early, the outcomes may not be accurate because not enough time has passed to determine if restitution had been

completed, or if healing has taken place. Subsequently if the interviews are conducted too late, then the results may also vary, since the initial outcomes of the process may have been forgotten by the participants. Ideally, the timing of these evaluations and interviews rests on what specific issues need to be assessed and evaluated. It has been established that the most appropriate time to conduct these post-mediation interviews is approximately two months following the mediation (Umbreit et. al. 1994, 211). This two month period is useful to identifying what the early results of the process were. The allocated period allows the participants enough time to digest and analyze their experience and perception of the mediation.

Nonetheless, it would also be the recommendation of this paper to request further interviews following the first two month evaluations. If assessments were to be continued to be administered every 1-2 years following the mediation, then perhaps a more realistic measure of long-term outcomes can be determined. It is hard to conclude what the long-term outcomes of the mediation may be following a two month period. This longitudinal approach will allow participants to address and recognize the short-term and long-term outcomes of the mediation experience. This will allow the victim for a chance to see if in fact the restitution agreement is entirely completed, and furthermore, if the initial positive reactions endure, for example the decrease in levels of fear of crime after sometime has passed.

This long-term approach should become a priority for the programs and the Canadian government. If the experience of the victims is one that shows high levels of satisfaction then the justice being sought does indeed reflect the victim-offender mediation program's and the government's capability to help in the promotion of the

needs and the rights of the victimized population. Furthermore, it should be the responsibility and the goal of the Canadian government to help in the funding of these short and long-term evaluations. With the support of the government through resources and funding there is a strong assurance that appropriate and useful research will be produced on a consistent and ethical basis.

Two months can offer a good indication to the researchers of the initial outcomes of the mediation session, however, as mentioned, it is yet to reveal the long-term consequences found from conflict due to crime. The participant/victim may feel that the mediation was successful immediately upon completion, however as time goes by their fear of re-victimization may not be reduced. As noted in Chapter Three, Umbreit's studies mainly reflect the fear of re-victimization from the same offender, however this does not touch upon other offenders and other or similar crimes. The trauma that has been experienced may take years to overcome, and two months may not provide enough time to offer a definite conclusion.

Additionally, the time frame decided by the victim, offender and mediator to complete the restitution agreement may stretch to a year or even longer. Therefore, the victim cannot realistically offer any input on this issue of fairness of, and satisfaction with, the restitution agreement until the agreement is completed. So interviewing the victims any time prior to the completion of the agreement may provide distorted satisfaction levels. Perhaps this is why there is a lack of research and data specifically surrounding the completion rates of the restitution agreements, and more data involved around the success of the development of these agreements. Nevertheless, it seems hard

to accept the victim's opinions on the success of the process, for if the agreement is uncompleted this may point to problems with the development.

In addition, it has been noticed that often researchers not only use the participants that have engaged in mediations to obtain results, but they also conduct their research in a comparative framework. Therefore, they will evaluate respondents who have been involved in mediation in comparison to those that either chose not to engage in or where not offered the opportunity to become involved in the mediation programs. This comparative analysis has led to another difficulty that has raised concerns such as, "when should the comparison-group interviews occur?" It has been recommended that interviews should be conducted two months following the date that the case receives a disposition from the court system, or the date that the mediation program referred the case back to court. This two month time frame may raise the same issues that have been brought forth above regarding victim evaluations (Umbreit et. al. 1994, 211). If no long-term interviews are conducted then there seems to be a weakness to these evaluations. It is imperative to see the initial outcomes, but also at the same time researching the longitudinal effects of the violation on the victim can provide important insights into long-term healing and closure.

There also seems to be limitations regarding the use of a comparison group in evaluations of victim-offender mediations. It has been well researched and documented that the criminal justice system does not treat victims well following a violation, and thus the reasons behind the introduction of this alternative form of dealing with crime and the conflict it creates. By comparing victims that participated in victim-offender mediation to those victims that did not, seems to provide already established outcomes. Researchers

are already aware of the dissatisfaction of victims from the criminal justice system, and it seems by comparing the mediation model to the criminal justice system only presents the obvious. Perhaps these systems are so different that they should not be compared at all. Instead of using a comparative format, it may be more realistic to just evaluate those that are similar in context. It is hard to depend on results that are comparing two completely different experiences; it is similar to comparing apples and oranges.

The Administration of Evaluations: *Assessing victims' satisfactions*

The evaluations of victim satisfaction is critical to the development and success of the programs, yet conversely these evaluations prove to be problematic. These challenges surround the many methods that are utilized in the collection of data. The majority of programs develop and administer their own scales to determine the levels of satisfaction of victims. These individually developed scales render generalizations difficult, as they may not lead to comparable outcomes (Umbreit & Bradshaw 2000, 2).

Many diverse ways of administering satisfaction evaluations are utilized and applied through various techniques such as format, which includes interviews and questionnaires; the timing of the assessment, such as early in the service, termination or follow-up; and finally the method that is chosen to conduct the evaluations, this can be in-person, by the phone or mail (Umbreit & Bradshaw 2000, 2). All these forms of obtaining data are well-established and useful, nonetheless, without a set of fixed and dependable guidelines that is acknowledged by all program sites there tends to be a lack of comparability across outcomes. To evaluate satisfaction as one component inevitably obscures the information suggested. For instance, a victim may be satisfied with the mediator, yet, they may not be satisfied with the restitution agreement. These evaluations

do not break up the specific relevant issue and report the individual findings. Instead these diverse satisfaction scales just group together the overall outcome which regrettably does not report the most realistic and practical conclusions (Umbreit & Bradshaw 2000, 4).

Analyzing the evaluations in general terms reveals a tendency to leave out the many components in which the satisfaction level of each individual victim is built upon. If the evaluations do not break down the many elements and analyze them individually, then a full and detailed analysis is not sought. Therefore, evaluations need to consider individually such things as mediator skills, experience of meeting the offender, satisfaction with the development of the restitution agreement, satisfaction with the restitution plan's completion etc. Examining the responses to evaluations with a fine toothed comb allows for a more thorough investigation to be rendered successful.

Umbreit and Bradshaw have critiqued this issue of validity, in terms of satisfaction, based on the diverse evaluations that are being administered. To resolve this concern they have developed a satisfaction scale that focuses on the different aspects of victim satisfaction. The scale was established through researching and consulting published sources on the levels of satisfaction, and is referred to as the Victim Satisfaction with Offender Dialogue Scale (VSODS). This scale recognizes specific areas concerning the satisfaction of victims, as well as particular questions that need to be addressed regarding each concern. These areas are mediator skills - were you treated respectfully by the mediator?; preparation for mediation - was it made clear to you that participation is voluntary on your part?; restitution - was the restitution agreement fair to you?; meeting the offender - did you have sufficient time to talk to the offender?;

experience of the criminal justice system - have you ever felt that our program was more concerned with procedures than with helping you?; and the subjective experience of the victim – did the meeting with the offender reduce the upset caused by the crime? (Umbreit & Bradshaw 2000, 5). This line of questioning tries to breakdown the different elements that contributes to victim satisfaction. The evaluation offers an array of questions that allows the victim to respond more accordingly. It appears that Umbreit and Bradshaw worked towards addressing particular sub-categories that have been deemed necessary in getting to the core of victims satisfaction. This reformed means of evaluating victim satisfaction will now be analyzed and further critiqued.

This scale was distributed to 197 victims of crime who engaged in victim-offender mediation sessions from four different program sites: Orange County and Los Angeles in California; Washington County and Dakota County in Minnesota. The sample for this study was made up of 63% male, and 77% female, with the offence categories of 11% person, and 89% property (Umbreit & Bradshaw 2000, 6). Two weeks following the mediation²³ the questionnaire was mailed out to the participants (Umbreit & Bradshaw 2000, 5). The findings suggest “as in previous research the distribution of scores was positively skewed with a large number of satisfied clients and smaller numbers of dissatisfied clients” (Umbreit & Bradshaw 2000, 6).

Certain guidelines have been set out by Umbreit and Bradshaw who claim that in following these guiding principles accurate and compelling result will be achieved. These guidelines for programs are a useful tool in helping in the administration of this satisfaction evaluation, for it provides evaluators with a mechanism that is clear and

²³ This two week waiting period is rather short to conduct a thorough investigation of victim's satisfaction levels. Albeit it is clear and concise results that this research project is ideally trying to achieve. This method of evaluation does offer results to the extremely initial experiences of the participants.

concise. In following an established set of guidelines, surveyors ensure that all respondent receive the same quality service. These guidelines are pertinent to the success of determining the satisfaction of participants and will be addressed below.

- Use of the VSODS scale should be based on the unique needs, goals and resources of each program. This might include doing a survey of satisfaction once a year or quarterly and using a random sample or sampling all participants in a specific limited time frame.
- Victims' satisfaction surveys should be done on a regular basis and use a fixed method (use the same format, timing, method, follow-up procedures) in order to enhance the interpretation of results. If different methods are used we cannot distinguish changes in satisfaction from changes due to method.
- Integrate victim satisfaction into all program evaluation activities.
- Communicate victim satisfaction results to funding sources, staff, community and in victim information brochures.
- Describe the sample (e.g., age, gender, race, and type of offence) from which the victim satisfaction data is drawn and note the rate of response. This will allow you to have a better sense of how strongly the results can be generalized to your program.
- Report satisfaction data by total mean scale score with standard deviation as a general measure of level of victim satisfaction. You also should report mean for each scale question and the percentages of levels of satisfaction for each question.
- Use the satisfaction data to examine sub-components of satisfaction (e.g., mediator skills, experience of meeting the offender, satisfaction with the restitution plan).
- Explore differences in victim satisfaction for different groups of clients (e.g., African-American, Hispanic, Caucasian; male/female; mandatory offender participation/ voluntary offender participation).
- Focus on dissatisfied victims and explore the problems
- Set quality control limits for acceptable victim satisfaction scores for your program and monitor routinely for meeting satisfaction goals.
- Collate comments offered on VSODS form and/or routinely have a small number of brief follow-up telephone discussions with victims to hear in their own words their experience of restorative justice services. This use of data in conjunction with VSODS scores can enrich understanding of critical issues in victim satisfaction.
- Use VSODS as a part of training and monitoring new staff.
- Integrate victim satisfaction information into continuous improvement activities (Umbreit & Bradshaw 2000, 11-12).

If followed properly, these guidelines can be used as a constructive instrument to help guide practitioners evaluate not only the larger components, but the smaller critical elements as well, as suggested earlier. Additionally, using a standard form of evaluation will help to provide an enriched and concise investigation of the satisfaction levels of victims. It is therefore imperative that researchers break down the many issues concerning the conflict and investigate them individually.

Nevertheless, as efficient as this means to measure satisfaction is, it still seems that Umbreit and Bradshaw overlooked certain imperative questions. First, where there is concern surrounding the issue of fear from re-victimization, this questionnaire, along with many other studies, continues to look specifically at the fear of re-victimization from the same offender. It is apparent where that line of investigation is necessary, a more critical issue to address as mentioned previously is whether a victim-offender mediation can address the victim's fear of being victimized by another offender.

This issue is critical, for if the fear of being a victim to crime continues to exist then healing becomes less likely to occur. Furthermore, victims are rarely concerned or fear the threat of being a victim to the same offender²⁴, however there may still be concern or fear that another offender may cause the same violation (Adams & Serpe 2000; Robinson 1998). Perhaps no form of justice can reduce the fears of being violated again, however not investigating this concern leaves the area open to debate.

²⁴ It should be noted that there are times when the victim is fearful of re-victimization from the same offenders when there is an ongoing relationship, such as family, work, neighbour, usually this fear is in the context of abuse. As suggested earlier, the majority of cases that are involved in mediation are generally dealing with smaller minor summary property and assault offences, and not ongoing abusive relationships.

It is therefore necessary to add a follow-up component to this satisfaction scale that will assess the longitudinal outcomes. Follow-up needs to continuously be conducted following the evaluation if it be six months, one year, two years, or five years later, it is critical to ensure more reliable and realistic research is being offered. A wider range of questioning needs to be addressed, and unfortunately the present research projects continuously evaluate the same things, with the same questions, which subsequently offer the same conclusions. On the one hand, it is useful for its comparability, however, on the other hand, it is useful to expand from the general evaluation and move into a more broad and longitudinal approach. Although long-term follow-up process may not be a simple project to achieve, it is necessary for the longevity and future success of the victim-offender mediation programs, and furthermore the experiences of its participants.

Umbreit and many other respected academics researching victim-offender mediation have completed a vast array of informative and helpful evaluations. These projects have all greatly contributed to the success of the victim-offender mediation programs, yet at the same time it has become apparent through researching for this thesis that the majority of the data and research is similar in content. This similarity as mentioned has its strengths in the fact the consistency is what we are looking for when trying to determine results. Nonetheless, a fresh perspective may be helpful. Without new questions and approaches, particularly longitudinal studies, the restorative justice movement may find itself at a standstill. Without researching on the present needs of the programs and its participants, the organization will lag behind and not offer updated

services. This will inevitably result in unhappy participants, and furthermore questionable results from the evaluations.

Concluding Remarks

The similarities expressed by both the restorative justice movement and the victim-offender mediation model illustrates that they are pursuing common goals and outcomes. Even though the victim-offender mediation model may not be completely achieving every goal that has been addressed by the restorative justice as suggested by the critics, the goals that are being achieved and maintained are far more beneficial to the victims and offenders than presently found in the criminal justice system. This alternative approach is one that focuses more on the conflict and its resolution in contrast to strictly punishment. The needs of the victim and the offender are met and held in high regard. Additionally, the victim and the offenders have a participatory and involved role within the process. The mediation setting creates an arena where dialogue and communication can take place through the facilitation of the mediator. It is at this point where clarification can be made about the violation, and stereotypes can be broken down. Once communication is sought, the victim and offender then mutually develop a restitution agreement that is feasible for both of them (Marshall 1998, 9). In the achievement all of these principles of the process, victims and offenders levels of satisfaction is expected to rise. Their experience within this alternative approach is more compatible with the needs of victims that have been addressed throughout this thesis.

Chapter 5

Summary Overview:

The challenge of seeking justice has been an area of great concern throughout history. The development of a justice system that places the needs of victims, offender and the community at the forefront is one that has yet to be accomplished. Instead, the criminal justice system as we know and have come to accept it, neglects the needs and experiences of those involved in the violation and places their focus strictly on what laws have been broken and what form of punishment will be handed down. As Christie explains, “criminology to some extent has amplified a process where conflicts have been taken away from the parties directly involved and thereby have either disappeared or become other people’s property” (Christie 1977,1) . Christie is suggesting that the organization of the courts, through the use of lawyers, namely the Crown attorney, has stripped the violation from the victim, who is consequently left to watch their case handled in a manner that is exclusive and disregarding.

This thesis has been an investigation of an alternative means for victims to obtain justice. Victims’ needs and experiences have been a main focus of this project, and it is the constant neglect and further isolation that victims encounter from the criminal system that must to be challenged. Reforms and changes within the system are not only necessary but imperative to ensure the respectful treatment of those who have been victimized. Rather than merely looking at the crime as an issue, the criminal justice system must also acknowledge the conflict that arises out of the violation (Llewellyn & Howse 1998, 5-7). If the issues /concerns that are brought about due to the criminal act are not handled in an effective manner, then the long-term consequences of victimization

will be profound. This does not help the victim to get over the violation and return their lives back to some form of normality. Instead, society is left with offenders who continue to offend and victims who continue to live life in fear (Marshall 1998, 3). It appears, then, that “justice” in fact is not sought, and the criminal justice system is not living up to its claims of protection and security of society.

Public demand for severe punishment, which those working to reform offenders found to be counter-productive, could only be relieved if attention was paid to victims’ needs and healing of the community, so that offender rehabilitation could only occur in parallel with the satisfaction of other objectives (Marshall 1998, 3).

Therefore, until the criminal justice system takes into account far more factors, such as victims’ needs and experience, as well as community objectives, then the appropriate form of justice will not exist.

This ongoing concern over the criminal justice system’s inefficiencies and disregard of victims has been an area of valid debate. Reforms were deemed necessary in order to ensure that those that had been violated due to crime were respected and taken more seriously. This challenge to the predominant system brought about an alternative process that has principles that are motivated towards respect and understanding for the parties involved in the crime and its conflicts. This alternative approach is that of Restorative Justice.

In the opening chapter of this thesis the philosophy of restorative justice was explained and described. To reiterate, the principles and goals of this alternative process are ones that involve voluntariness for all participants; the willingness of the offender to take responsibility, while showing a level of remorse, and a desire to make things right; face-to-face communication and dialogue through the facilitation of the meditation; and

the mutual development of a future course of action to amend the wrong (Latimer et.al. 2001, 1).

Restorative justice is an approach that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime - victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration and prevents future harm (Cormier 2002, 1).

This restorative approach can be executed through the use of the victim-offender mediation model. This process falls under the philosophy of the alternative approach and therefore shadows many of the principles and goals set forth by the restorative justice paradigm.

The victim-offender mediation model “brings victims and accused persons together with a mediator to discuss the crime and to develop an agreement that resolves the incident” (A Consultation Paper 2000, 4). Therefore, the mediation provides an arena where victims have an opportunity to express their feelings to the offender, and then having the offender justifying their actions while showing remorse for the criminal act. This process is then expected to help the victim in their healing process, which in turn allows them to gain some sense of control back into their lives. Simultaneously, the process provides the offender with the chance to take responsibility for their wrongdoing and to formulate a course of action to make things right again (A Consultation Paper 2000, 4). This interactive process allows those that have been most affected and involved in the violation to step in and participate in making a terrible situation manageable.

As suggested throughout this thesis, the main issue to be addressed and investigated was whether victims experience a higher level of satisfaction in engaging in

victim-offender mediation programs in comparison to the criminal justice system. Although the principles and goals set-out by the alternative practice claim to address the needs and experiences of the participants involved, it was necessary to identify and analyze studies and evaluations that measure certain elements that lead to victims' satisfaction.

Chapter Three investigated this research question, looking at specific issues that have been addressed through evaluations and providing a clearer and more concise perspective on the experiences of the participants of these programs. The main tool/evaluation used in this research project was an assessment of four Canadian Provinces, conducted by Umbreit et.al. The specific components that were addressed to determine the level of satisfaction of victims were focused on, voluntary participation, fear of re-victimization from the same offender, fairness with the process, restitution agreements, and finally satisfaction level of victims. All these elements were necessary to analyze in turn for each one works together with the next to build on a strong understanding of victim satisfaction (Umbreit et. al 1995). This study suggests that,

Client satisfaction with the manner in which the justice system responded to their case was significantly more likely to be found among complainants/victims (78%) and accused/offender (74%) who participated in mediation, at the combined sites, than among similar complainants/victims (48%) and accused/offender (53%) who were referred to mediation but never participated in mediation (Umbreit et. al. 1995, 9).

As stated earlier, the findings related to high levels of client satisfaction and perceptions of fairness with victim-offender mediation programs observed in this study corresponded with previous findings that emerged in the United States (Coates and Gehm; Galaway 1988; Gehm 1990; Umbreit 1989, 1991, 1994; Umbreit and Coates 1993) and in Europe

(Dignan 1990; Marshall and Merry 1990; Messmer and Otto 1992). The studies show comparable results. Therefore, the evaluations of victim-offender mediation programs indicate that this restorative justice model has the ability to enhance victims' levels of satisfaction, encouraging a better experience within the process and dealing with the conflict that arises out of crime (Llewellyn & Howse 1998, 10-12).

Restorative academics and practitioners have shown great dedication in the development of this movement and alternative practice. The studies presented, as indicated above, all provide outcomes that prove to benefit victims as well as offenders. Nevertheless, it is still apparent that many critiques are brought forth in order to challenge this alternative approach. The limitations of the mediation process were discussed and outlined in the previous chapter concerning the issues of voluntary participation, appropriate case selection, net-widening and the development and assessment of evaluations. These concerns need to be challenged and in some cases reforms invoked in order to help improve the output and services of these mediation programs.

It is then the recommendation of this thesis that longitudinal studies must be administered in order to offer the most compelling results. Additionally, alternative questions, looking at the restitution completion rates, and rates of fear of re-victimization generally need to be assessed to ensure that the focus of the results are not misleading participants, nor the final outcomes of the evaluations. Without long-term evaluations, many questions are left unanswered. For example it is difficult to assess the satisfaction rates regarding the completion of restitution agreements, when the agreement is still yet to be completed. It is one thing to measure the response rate of the level of satisfaction in

the development of restitution agreements; it is another to address overall completion rates of the agreements themselves. These two related, yet distinct issues must be investigated separately to provide a more thorough analysis. However, this can only be accomplished through the utilization of long-term and short-term ones, as well as current evaluations (Latimer et.al. 2001, 18).

Furthermore, longitudinal studies should provide a more accurate look into the level of healing and reduction of fear implicit in the process. Healing and the decrease in fear that victims feel in the aftermath of a crime may take years to achieve, and the short-term evaluations cannot establish if the process was successful based only on the participant's initial response. If evaluators were to question the short-term outcomes, and juxtapose these with the long-term outcomes, more convincing and realistic results will be obtained.

Moreover, there is little reason for this lack of longitudinal research. It is now almost thirty years since the first victim-offender mediation took place in Kitchener, Ontario. This time frame has left much opportunity to evaluate the outcomes in a long-term perspective, yet such evaluations remain elusive. Perhaps organizations and programs do not have proper funding, or the interest to utilize a longitudinal study, nevertheless, it is critical for governments and programs to come up with the finances to execute and maintain long-term studies. Without looking into areas that have not yet been researched, a whole array of unanswered questions persists. It is crucial for the well-being of victims, offenders and the greater society that these forms of evaluations do take place. If victims continue to be neglected, and offenders never feel a sense of

responsibility, nor remorse for their actions, then the future of criminal justice is indeed bleak.

In order to work for the betterment of this process and its participants, there are future steps that must be acknowledged and recognized in order to ensure that the most reliable and realistic methods and practices are implemented and exercised.

Future Outlook:

There are many steps that need to be considered and put into practice in order to ensure the continued success of the victim-offender mediation model. Specific recommendations have been suggested to help direct researchers and practitioners to go beyond what has already been accomplished and touch upon alternative questions within the research and evaluations. This fresh perspective will help in providing the most reliable and realistic information pertaining to the growth of the movement. The steps must be acknowledged and put into effect in order to grow and achieve greater recognition, and acceptance of this practice, for as shown throughout this thesis the goals set out can truly benefit the participants if the process is applied, executed and maintained effectively. These future directions are as follows:

- Greater restorative justice informational needs must be addressed by the criminal justice system, as well as the proper distribution of resources to victims of crime. Information is the key to ensuring that understanding and clarification has been made to the legal personnel and moreover the participants advised to mediation (Graycar 1999, 5);
- Increased co-operation and communication is necessary to take place between the service providers, police, and criminal justice personnel with emphasis placed on creating written guidelines in order to ensure clarity and understanding of the process to all participants involved. The greater the co-operation and interaction of the legal personnel and mediation services, the more opportunities there are to ensure an enriched and ongoing level of comprehensibility is achieved. This communication can help to strengthen the goals of the restorative process and ensure

that they are addressed properly within the criminal justice system (Graycar 1999, 5);

- The need for public education on victim-offender mediation programs, and greater emphasis on the training of practitioners, and criminal justice personnel in dealing with victims (Graycar 1999, 5);
- Country-wide strategies and guidelines must be developed and maintained to ensure consistency with the programs and the outcomes. These strategies should also include 1-800 numbers that are accessible to all, which outline resources and programs available to victims of crime (Graycar 1999, 5);
- Further research and evaluation needs to be developed and administered. These evaluations need to address a longitudinal approach which explores alternative questions to what has already been examined (Latimer et. al. 2001, 21).

The recommendations put forth are ones that are integral to the development and maintenance of the initiatives and principles postulated by the restorative justice academics. If executed appropriately as suggested already, this paradigm can provide a fairer experience of justice for victims dealing with conflicts that arise out of crime. In sum:

The restorative justice movement is slowly changing the face of the [Canadian] criminal justice system, teaching us that “[the] problem of crime can no longer be simplified to the problem of the criminal”. Crime is more than breaking the law; it “injures the individual victim, communities, offender and their families, and it damages relationships”. Restorative justice acknowledges that there is much more at stake than the fact that the crime has been committed. The restorative justice vision requires the criminal justice system to delve beyond the surface of crime and to examine closely the harm it causes to real people (Shenk 2001, 216).

Once the acknowledgement and recognition of victims’ needs and rights become a top priority of the criminal justice system, a “truer justice” can and will be achieved. Moreover, applying the principles found in the victim-offender mediation model allows for victims to take back some control in their lives, and pursue closure on the traumatizing experience. Safety and security are vital for the well-being of citizens within Canadian culture and the

larger society in general. Placing these victimized people in a marginalized position through ignoring their experiences and stories only results in a lack of protection from the system that is put in place to ensure this safety and security. Therefore, in offering victims and offenders an alternative form of handling the crime and, specifically, the conflict that arises out of it helps in providing an arena that is motivated at inducing healing and reducing further offending.

Retributive vs. Restorative Justice
Appendix #1

RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
<u>Problem</u>	
Defined narrowly, abstractly, a Legal infraction	Defined rationally, as a violation on people
Only legal variables relevant	Overall context relevant
State as victim	People as victims
<u>Actors</u>	
State (active) and Offender (passive)	Victim and offender primary along with community and state
<u>Process</u>	
Adversarial, authoritarian, Technical, impersonal	Participatory, maximizing information, dialogue and mutual agreement
Focus=guilt/blame	Focus=needs and obligations
“neutralizing strategies” encouraged	empathy and responsibility encouraged
<u>Outcome</u>	
Pain, suffering	Making things right by identifying needs, and obligations; healing; problem-solving
Harm by offender balanced by harm to offender	Harm by offender balanced by making right
Oriented to past	Oriented to future

(Zehr 1997b, 70)

Appendix #2
International Development of
Victim Offender Mediation Programs

Country	Number of Victim Offender Mediation Programs
Australia	5
Austria	17
Belgium	31
Canada	26
Denmark	5
England	19
Finland	130
France	73
Germany	348
New Zealand	Available in all Jurisdictions
Norway	44
South Africa	1
Scotland	2
Sweden	10
United States	293

(Umbreit 1997, 6)

Appendix #3
Program Characteristics by Site

	Calgary	Langley	Ottawa	Winnipeg
Program Start	1985	1982	1989	1979
Organization Type	Private Non-Profit	Private Non-Profit	Private Non-Profit	Private Non-Profit
Total Budget, 1991	\$69,025	\$55,000	\$55,000	\$105,290
Total Budget, 1992	\$55,000	\$55,000	\$75,000	\$120,758
Total Budget, 1993	\$55,000	\$55,000	\$85,000	\$122,000
Staff (FTE's) 1991	1.7	2	1	4
Staff (FTE's) 1992	1.5	2	1.6	4.6
Staff (FTE's) 1993	1.5	2	1.6	4.5
# of Volunteer Mediator, 1991	0	30	3	50
# of Volunteer Mediator, 1992	0	30	7	55
# of Volunteer Mediator, 1993	1	25	10	55
Mediation Training Length	40 hrs. + Apprenticeship	30 hrs. class + 3 Observations	3 Days + Apprenticeship	4.5 Days + Apprenticeship
Co-Mediators Routinely Used	No	No	No	No
Primary Referral Source	Probation	Probation	Crown	Crown
Point of Case Referral	Post-Sentencing	Pretrial/Court Order	Postcharge/Pretrial	Postcharge/Pre-plea/Pretrial
Most Frequent Offense	B & E	Mischief	Assault	Assault

(Umbreit et. al. 1995, 4).

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