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**An Exploration of the Role of Spirituality in Selected
Restorative Justice Programs for Youth in Ontario**

by

Lara Green. B.A.. B.Ed.

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

Master of Arts

**Department of Sociology and Anthropology
Carleton University
Ottawa, Ontario
January 21, 2002**

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submitted by Lara Green, B.A., B.Ed.
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Department of Sociology and Anthropology

Tullio Caputo, Supervisor

Chair, Department of Sociology and Anthropology

Carleton University
January 18, 2002

ABSTRACT

While in Canada, restorative justice is rooted in Aboriginal and Judeo-Christian spiritual traditions, little research has focussed on this area. This study sought to explore the spiritual dimension of restorative justice. In-depth interviews were conducted with 20 respondents representing 12 different restorative justice programs in Ontario. These included: victim offender reconciliation programs, youth justice committees, various Aboriginal justice programs and community justice conferences. Respondents were asked a series of questions related to the role of spirituality in restorative justice programs. The findings indicate that the question of spirituality is a very complex one. A number of definitions of spirituality were offered. Three quarters of the respondents indicated that there was a role for spirituality in restorative justice processes noting that for processes to be successful, participants had to reach a meaningful level of engagement. This was related by many of the respondents to a spiritual dimension, whether explicit or implicit in the programs. The implications of these findings are discussed.

ACKNOWLEDGEMENTS

As I began to “see the light at the end of the tunnel” with respect to this project, I started to think back on all of the different people that I have encountered on this journey. And in my minds’ eye I could see the faces of some of those who by their encouragement and support helped me to see this thesis to completion. There are so many people that have “held up my hands.” Many times I have thought of each of you and I am grateful to you for your words of hope in times of discouragement and for helping me to focus and believe that what I once thought was impossible could be possible.

I want to thank my supervisor, Dr. Tullio Caputo and my advisor, Dr. Katherine Kelly for their guidance and advice as I worked through this project, particularly as I neared the finish line. Thank you for believing that I could do it. Thank you also for your patience, strength and encouragement. I am finally done! I also want to thank Dr. Renata Mohr for acting as the external reader for this thesis. And, thank you for our coffee at Starbucks. I was just getting off the ground then and the time you spent with me was much appreciated!

I also want to say thank you to all of the people whose views are represented in this thesis. Thank you for taking the time to talk with me in the midst of your very busy schedules and for giving of yourself - for sharing your experience, knowledge and beliefs about restorative justice. Thank you for your commitment to pursuing a fuller meaning of justice.

I want to thank all of my colleagues at the National Crime Prevention Centre for checking in - for asking how things were going, listening to my progress reports and cheering me on. Suzanne, for all of the times that you stopped by my office - thank you! It means so much to me. Thank you Mark and Lucie for “sharing my pain.” Ha! Thanks for listening and listening and listening:) I also want to thank my bosses, past and present for connecting me with resources, providing me with opportunities and making it possible for me to have time off. Randy, Danny and Jayne - thank you! There were so many others who spoke words of encouragement or asked how things were going - thank you to all of you!

I also wanted to thank my family, my friends and my church family for their prayers and support. Thanks for coming alongside, Mom, for knowing just when I needed to hear your voice and for the many prayers that you prayed. Bruce and Maureen, thank you for your words of affirmation and comfort. I have the quote that you gave me right on my printer Maureen, and have looked at it many times and been encouraged to persevere. Thank you Sylvia and Sascha for the encouraging cards and for your prayers!

I especially want to thank my boyfriend Greg for his patience and for suffering long with me. You encouraged and supported me in so many ways. When I was tired, unmotivated, discouraged and ready to quit, you always believed in me, in my ability to complete this project

and in God's purpose in it. Thank you for being a sounding board as I tried to sort out my thoughts and for your constancy. Thank you for the dinners, the flowers, the phone calls and encouraging words and for your prayers. This truly was a team effort!

I pray that God will bless each one of you richly for the kindness that you have shown to me.

Most of all, I want to thank Jesus Christ who has been my encouragement, my strength, my hope and my refuge. You truly are a friend that sticks closer than a brother and I have been so blessed to experience Your hand upon my life through this process.

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CHAPTER I

INTRODUCTION

I. INTRODUCTION

In recent years, there has been an increasing disenchantment among Canadians with the current criminal justice system, particularly as it responds to young offenders. Many argue that while the Canadian youth justice system was created to uphold justice, reduce crime and protect citizens, it has often failed to fulfill these goals. In addition, some argue that the focus of the current system on lawbreaking as an offence against the state, fails to recognize the human aspect of crime - that it affects and involves people (Zehr, 1990; Belgrave, 1998). Furthermore, responses to criminal behaviour in the current system have been predominantly adversarial in nature, focussing on punishment and deterrence. Many who call for changes to this system argue that justice should involve healing and restoration and should be holistic considering the physical, mental, emotional and spiritual dimensions of all of the parties involved in and influenced by crime. Those who think about justice in this way are proponents of what is now widely known as restorative justice.

Restorative justice, community justice and healing justice are all terms that have been used to denote a philosophy of justice that represents a different way of thinking about and responding to crime and conflict (Law Commission of Canada, 1999). Although a universal definition of restorative justice does not exist, the United Nations Working Group on Restorative Justice has adopted a definition of restorative justice processes which states that a restorative process is “any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help

of a fair and impartial third party (Economic and Social Council, 2000). Consequently, crime is not seen solely as an offence against the state but as wrongdoing against individuals and communities. Today there are many expressions of restorative justice including sentencing circles, victim offender mediation programs, family group conferencing models and circles of support and accountability, to name a few.

Although the term was coined in the 1970s, the philosophy and practise of restorative justice are not new - they have been *re-discovered* (Hadley, 2001a). Historically, communities all over the world employed restorative justice in response to crime and conflict. Many of these approaches were closely connected to the spiritual traditions of various groups including Aboriginals, Christians, Muslims and Jews (Hadley, 2001b). Supporters of restorative justice, especially those who are Aboriginal, believe that notions of judgement and punishment belong to the Creator (The Church Council on Justice and Corrections, 1996). Many Aboriginal people believe that those who harm others are out of balance with themselves, their family, their community, and their Creator and need help and support to heal and restore harmony. In the Christian tradition, there has been debate concerning whether the Bible supports a “just deserts” approach to crime over a more restorative approach. The New Testament, which is the foundation for Christian practise and belief, promotes redemption, forgiveness and peace-making which are themes in the restorative justice literature over punishment and deterrence (Marshall, 2001).

While much of the literature on restorative justice implies the importance of a spiritual

dimension. little research has been conducted to assess its relevance or importance to the effectiveness of the justice process. In addition, while the philosophy behind restorative justice appears to have a spiritual basis, it has also been adopted by the state in secular justice programs as an alternative approach to current criminal justice responses to crime. The implementation of these types of restorative justice programs through the secular state raises questions about the role of spirituality in restorative justice. If the philosophical underpinnings of restorative justice have a strong spiritual or theological basis, will programs such as youth justice committees and family group conferences that are predominantly secular, be based on the same types of philosophical and spiritual assumptions which define restorative justice?

This thesis will provide a history of the youth justice legislation along with a discussion concerning the rise of restorative justice in Canada. An in-depth discussion of the philosophy and practise of restorative justice will be presented. Restorative justice will also be contrasted to the retributive justice model that has dominated much of criminal justice thought in the Western world. In addition, the spiritual roots of restorative justice will be discussed. Finally, through a qualitative analysis of twenty interviews conducted with directors/facilitators and participants in restorative justice processes involving young offenders, this paper will consider the relationship between spirituality and restorative justice. In particular, it will explore the question, "What is the role, if any, of spirituality in restorative justice programs?"

CHAPTER II

LITERATURE REVIEW

II. LITERATURE REVIEW

History of Youth Justice Legislation - Introduction

The role of the youth justice system in Canada is extremely complex. Competing voices are constantly seeking to shape the principles, goals and functions that the system should fulfill. Some of these voices are louder than others. Some appear more credible at certain points in time depending on the prevailing political, social and economic climate. Many of them have divergent views and call for different approaches in responding to youth crime. The challenge for the youth justice system is to balance these often conflicting demands and influences. The result is a constant tension in responding to a wide and ever changing array of voices which represent beliefs, values and experiences that may conflict, compliment or overlap one another.

This chapter will provide a brief history of the *Young Offenders Act* which currently underpins the youth justice system, beginning with a discussion of its precursor, the *Juvenile Delinquents Act* and culminating in a summary of the current debate. It will identify several different philosophies and values which have shaped the law and its implementation over time. In addition, recent statistics from public opinion data and youth justice statistics will be presented which underscore the often contradictory nature of the debate around youth justice. Finally, a portion of this section will focus on the increased attention being paid to the philosophy of restorative justice and its role in shaping youth justice.

The Juvenile Delinquents Act

The *Juvenile Delinquents Act* was established in 1908 within a climate of concern for children. The development of child labour laws, public education and the protection of abused children were all foci of concern at that time (Hudson et al., 1988). Consequently, the law reflected the prevailing beliefs about children and influenced how the state responded to children who broke the law; it attempted to focus on their needs and protection. It was also based on a positivist, medical model that rejected the notion of free will claiming that, "delinquency was best understood as a disease and that it could be cured" (Prefontaine, 1994, 6). These philosophies determined the emphasis of the Act and influenced how it was implemented.

The purpose of the *JDA* was to ensure:

"that the care, custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as is practicable every juvenile delinquent shall be treated not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance" (Juvenile Delinquents Act, R.S.C. 1970, c. J-3, s.38).

The state adopted what has become known as the "parens patrie" philosophy seeing itself as a parent acting in the best interests of a child (Bala, 1988). Sentencing focused on the needs of the delinquent rather than on the offence, the goal being rehabilitation instead of punishment.

While the intentions of the law were good, some of the unintended consequences of the legislation were in direct opposition to child welfare. For example, the law was highly discretionary giving power to police, judges and probation officers to decide what was best for the child; the rights of children were disregarded (Bala, 1988). They were not given adequate

information concerning their rights to legal counsel nor were they able to appeal the court's decision (Prefontaine, 1994). In addition, sentences were often of an indeterminate length so a child could be held in custody at a training school until age 21 (Leschied, 1995). As such, any child between the ages of seven and sixteen (under the Act), could spend their entire childhood and/or adolescence in custody.

In the 1960s the political agenda was influenced by civil libertarian and conservative philosophies (Leschied, 1995). According to Leschied (1995), concerns for the rights of young people and at the same time, cries for tougher crime laws, led to demands for changes to the *JDA*. The two main areas of dissatisfaction were: "increasing doubt that needs-based intervention could adequately respond to "out-of-control" young offenders; and unlimited judicial discretion was seen as compromising the rights of young people"(Leschied, 1995, 2).

Academics and the public were becoming increasingly cynical of the effectiveness of rehabilitation to accomplish the larger goal of protecting society from "out of control" young people (Caputo, 1987; Prefontaine, 1994). Further, "(f)amily court judges had come to be viewed as "untrustworthy" without the benefits of a formal court process" (Leschied, 1995, 2). It would be almost 25 years and numerous minor reforms, commissions and discussions later, before changes to the *Juvenile Delinquents Act* would be realized. Of particular importance was the proclamation of the Canadian Charter of Rights and Freedoms. The result was the development of the *Young Offenders Act*.

The Young Offenders Act

Bill C-61, better known as the *Young Offenders Act*, was enacted in 1982 and proclaimed in Parliament on April 2, 1984 (CAEFS, 1994, 1). The main features of the Act include: a change in philosophy, an emphasis on due process, and changes in dispositions, including a review

process and the introduction of Alternative Measures (Wardell, 1982-83).

The "Declaration of Principle" that introduces the *Young Offenders Act* reveals the philosophy behind it. Some of the main emphases found in Section 3 of the Act are as follows:

- young persons should be held responsible for their behaviour, though not to the same degree as adults;
- young persons who commit offences require supervision and control but at the same time, they have special needs that require assistance;
- young persons have rights as set out in the Charter of Rights and Freedoms that should be guaranteed and protected (Leschied, 1995; Stevenson, et al., 1998); and
- "alternatives to judicial proceedings should be considered for young offenders" (Stephenson, et al., 1998).

Under the *YOA*, young offenders are guaranteed a fair hearing and due process including the right to counsel (Naismith, 1983). Judges discretionary powers are necessarily limited and there is "...increased uniformity in responding to young offenders" (Naismith, 1983, 18). Offenders are now given "proportional sentences" - the punishment is intended to suit the crime (Leschied, 1995, 2) and sentences are based on the age of the offender, taking into account changes in learning that occur throughout adolescence (Prefontaine, 1994, 8). In addition, dispositions are limited to a fixed time period and discharges are made available (Naismith, 1983).

Other key changes found in the *YOA* include a shift in emphasis from a focus on children to a focus on young people. Young persons between the ages of 12 and 17 (until their eighteenth

birthday), are covered under the Act while children from birth to age 11 are now dealt with under child welfare legislation (Stephenson et al., 1998). Also, provisions requiring consent from a young offender to provide him/her with treatment were incorporated into the Act (Leschied, 1995). Finally, the *Young Offenders Act* provides opportunities for young offenders to consent to participate in non-judicial proceedings or alternative measures (section 4) such as mediation, as a response to less serious offenses. "Alternative measures refers to a range of youth diversion programs... In accordance with the philosophy under the act, the purpose of these programs is to direct young offenders away from the court system and into programs that de-emphasize punishment in favour of accountability, restitution and reconciliation (McNaught, 1998, 1).

According to Leschied (1995), the Declaration and statutes in the *Young Offenders Act* reflect an attempt to marry three different philosophies concerning youth justice: "justice (access to due process), crime control (through deterrence) and rehabilitation" (Leschied, 1995, 3). While the *JDA* emphasized rehabilitation and to some extent, crime control, there has been considerable debate concerning whether or not the *YOA* has had an influence on these schools of thought (Leschied, 1995, 3). It appears that the *YOA* has ensured justice for young offenders but it has been difficult to "...achieve a compromise between the youths' needs for protection of rights and rehabilitation, and society's right to be protected from illegal behaviour" (Hudson, et al., 1988, 6). With the introduction of the *YOA* it appears that crime control has received considerable attention but concern for the rehabilitation of young offenders has waned

(Leschied, 1995, 3). In fact, since its inception, there has been an increased emphasis on crime control, reflected in increased rates of custodial sentences (Hung and Lipinski, 1994; Stephenson et al., 1998). Only recently has there been a renewed commitment to rehabilitation as a viable means of preventing crime (Standing Committee on Justice and Legal Affairs, 1998). The following paragraphs will provide a brief outline of amendments to the *YOA*, many of which reflect the increased concern with crime control and a perception that young people are "out of control".

Amendments to the Young Offenders Act

Since its inauguration in 1984, the *YOA* has been amended three times. According to Stephenson et al. (1998), the first set of amendments in 1986, focused on "...the technical and procedural revisions that are common with new laws" (Stephenson et al., 1998, 10). These changes were related to custodial placements, retention of youth records and the lifting of publication bans (Department of Justice, 1998; CAEFS, 1995). The second set of revisions occurred in 1992 introducing harsher penalties for young offenders who commit serious violent crime. One of the revisions increased the maximum sentence length from three to five years for youths convicted of murder. Another provided clarity on procedures for transferring youth to adult court (Department of Justice, 1998).

In 1995 another set of revisions were introduced by the Honourable Allan Rock, the Federal Minister of Justice at that time. These amendments were designed to address increased fear of

violent youth crime and increased dissatisfaction with the ability of the Act to deter young offenders (Stephenson et al., 1998). There was a definite philosophical shift to an emphasis on the protection of society as a result of these amendments (Stephenson et al., 1998). Bill C-12 increased the penalty for first and second degree murder from five to ten years and three to seven years consecutively. In addition, it included an amendment allowing for the automatic transfer of 16 and 17 year olds charged with serious violent offences such as murder and attempted murder, to adult court (Stephenson et al, 1998). The amendment also made provisions for victim impact statements to be used in youth court (Department of Justice, 1998).

The Youth Criminal Justice Act

The more recent discussions concerning youth justice legislation have resulted in a call to replace the *Young Offenders Act* in favour of a new set of laws entitled the *Youth Criminal Justice Act*. The new Act reflects recommendations for amendments to the *YOA* from the Federal-Provincial-Territorial Task Force on Youth Justice, the Standing Committee on Justice and Legal Affairs and the meeting of First Ministers (Department of Justice, 1998). The recommendations were the result of numerous discussions, public hearings, national forums and committee meetings held between 1995 and 1997 which marked a broad and in-depth review of the *Young Offenders Act* (Standing Committee on Justice and Legal Affairs, 1997). These recommendations addressed issues such as: "age limits, serious offenders, alternatives to the courts, transfers and sentencing" (Department of Justice, 1998, 2).

In May 1998, the Federal Minister of Justice, the Honourable Ann McClellan announced the development of a new youth justice strategy entitled the Youth Justice Renewal Initiative which included a proposal to replace the *YOA* with the *YCJA* (Department of Justice Canada, 2001b). The initiative attempts to respond to public concerns about the ineffectiveness of the youth justice system by combining three key directions which reflect a move toward a two-tiered system of youth justice (Stephenson et al., 1998). These include supporting community-based crime prevention programs, establishing meaningful consequences for youth crime, and rehabilitating and reintegrating young offenders into the community (Department of Justice, 1998).

“The goals of the Youth Justice Renewal Initiative, including the new legislation are to:

- increase the use of measures outside the formal court process that can often be more effective in addressing some types of youth crime;
- establish a more targeted approach to the use of custody for young people (Canada imprisons more youth than any other Western country);
- improve the system’s ability to rehabilitate and reintegrate young offenders;
- increase the use of community-based sentences for non-violent youth crime;
- establish special measures for violent offenders that focus on intensive supervision and treatment; and
- increase public confidence in the youth justice system” (Department of Justice Canada, 2001c, 1).

The Department of Justice Canada (2001b) states, “The Act reflects a balanced approach to

youth justice that aims to instil values such as accountability, responsibility and respect. The Act includes more effective, targeted measures to deal with both serious, violent offences and the vast majority of youth offences which are less serious" (Department of Justice Canada, 2001b, 1).

The *Youth Criminal Justice Act* clearly states that the primary goal of the legislation is the protection of society. As a result, the amendments reflect stiffer sentences for serious, violent young offenders and changes to the maximum age limits of offenders. Some of the amendments include:

- lowering the minimum age for young offenders who are "presumed to be liable to adult sentences" from age 16 to 14 (Latimer & Gratton, 1998);
- expanding the offences for which young offenders would be transferred to adult court to include in addition to murder, attempted murder, manslaughter, and aggravated sexual assault, a provision for repeat serious violent offenders to be liable to adult sentences (Latimer & Gratton, 1998); and
- allowing the names of all young offenders who have been convicted and qualify for an adult sentence to be published. The names of 14 and 15 year olds who commit serious violent offences and are convicted may also have their names published (Latimer & Gratton, 1998).

It also makes a clear commitment to crime prevention and rehabilitation in the Declaration of Principle. Among the original guiding principles in the *Young Offenders Act* are two new principles which state that:

- crime prevention is essential to long-term protection of society and is best assured by addressing the underlying causes of youth crime; and

- the primary purpose of the criminal law, the protection of society, is best served wherever possible by rehabilitation efforts (Standing Committee on Justice and Legal Affairs, 1997, 8).

The new Act also provides a special sentencing option that requires high-risk, violent young offenders to participate in rehabilitation and treatment programs as part of their sentence, and requires them to "...be subject to extended periods of controlled supervision in the community once released" (Latimer & Gratton, 1998). Finally, the legislation encourages the use of community-based sentences for less serious young offenders to divert them away from the justice system (Latimer & Gratton, 1998).

In "Youth Justice: A New Approach" (2001) developed by the Department of Justice Canada, the major differences between the proposed legislation and the *Young Offenders Act* are identified. One of the key elements of the *YCJA* is the inclusion of "specific principles to guide the use of extrajudicial measures, the imposition of a sentence and custody" (Department of Justice Canada, 2001a). The *YOA* does not provide specific direction guiding implementation of the Act at the various stages of the youth justice system. The proposed *YCJA* "(c)reates a presumption that measures other than court proceedings should be used for a first non-violent offence" and "(e)ncourages their use in all cases where they are sufficient to hold a young person accountable" (Department of Justice Canada, 2001a). The *YOA* allows for the use of alternative measures rather than court proceedings but does not create a presumption that they should be used in responding to minor offences. The new legislation states that custody should

be reserved for violent and repeat offences while the *YOA* provides no restrictions on the use of custody. The *YCJA* also proposes a provision to allow advisory groups or “conferences” to advise police officers, judges or other decision makers under the Act regarding appropriate extrajudicial measures, sentences, reintegration plans and conditions for release from pretrial detention (Department of Justice Canada, 2001a). The *Young Offenders Act* has no such provision.

The Honourable Anne McLellan, the current Minister of Justice and her predecessor, the Honourable Allan Rock identified public dissatisfaction and lack of resources as the main reasons for proposing changes to the Act including proposing harsher penalties for young offenders and providing increased support for crime prevention, rehabilitation and reintegration efforts (Latimer & Gratton, 1998). They noted that public confidence in the Act was low due to its inability to meet the public’s expectations for protection against crime and a reduction in youth crime rates (Latimer & Gratton, 1998).

Judging from opinion poll data gathered in the early 1990s it appears that many Canadians did oppose the *YOA* and supported amendments to it. Almost three quarters (72%) of Canadians who took part in the survey agreed that the courts were not harsh enough with young offenders (Gallup Canada, January 2, 1992:1). This statistic had fallen in the previous five years but still indicated a strong demand for harsher penalties for young offenders (Gallup Canada, January 2, 1992:1). In 1993, a Decima research report also found that Canadians wanted changes to the

Young Offenders Act. When asked if they supported or opposed the *YOA*, over 50 percent of those surveyed stated that they were in opposition to the Act and more than one third felt that tougher legislation was needed for young offenders (Decima Research, 1993:8-9).

The perceptions of Canadians indicate a concern that violent youth crime is increasing and that the *YOA* has been ineffective in addressing young offenders. Youth justice statistics however, reveal a somewhat different story.

Youth Justice Statistics

In their report, "Questions and Answers on Youth and Justice", Hung and Lipinski (1994) use Uniform Crime Report data to outline trends in youth crime and charge rates. According to their statistics, between 1986 and 1992, the number of youths arrested had increased by 18 percent from 179,000 to 211,700 (Hung and Lipinski, 1994, 2). Of those arrested, the number of youths charged were 113,000 and 140,000 respectively, indicating a 24 percent increase in charge rates between 1986 and 1992 (Hung and Lipinski, 1994, 2,5). Most of the crimes committed by youth were property offenses. These accounted for 70 percent of the charges in 1986 and 60 percent in 1992 . Eight percent of the charges in 1986 were for violent crimes while this figure rose to 14 percent in 1992. However, most of these charges were for minor assaults (Hung and Lipinski, 1994, 6).

A review of the youth justice statistics reveals that the overall youth crime rate is declining.

Between 1991 and 1997, the rate of property crime fell annually, dropping 23 percent over this

period. "The rate of young people charged with violent crimes increased over this same period. However, since peaking in 1995, the charge rate for violent crimes among youth has decreased by 3.2%" (Department of Justice, 1999). Furthermore, while the statistics do reveal an increase in violent youth crime in the past decade which is consistent with citizens' concerns about youth crime, much of the increase can be attributed to minor assaults. What appears to be inconsistent with the public's concern is the sentencing rate for young offenders. The public's belief that the *Young Offender's Act* and the youth justice system are "too soft" on youth who commit crime is unsupported by the statistics. For the past several years, the courts have been "tough" on young offenders. In fact, Canada has one of the highest incarceration rates for young offenders in the world (National Crime Prevention Council, 1996, 5). Almost 80 percent of the nearly \$10 billion allocated to the youth justice system are spent on the operation of open and closed custody facilities (Standing Committee on Justice and Legal Affairs, 1997, 35). The large proportion of monies spent on custody leaves very little for the development and implementation of initiatives to assist youth at risk and their families and youth who commit minor offences (Standing Committee on Justice and Legal Affairs, 1997, 37). This problem has existed for several years but in recent years much attention has been focussed on the need for community-based means and resources for preventing and responding to youth crime.

In 1999, the General Social Survey (GSS) examined public attitudes toward sentencing for youth in Canada for the first time (CCJS, 2000, 7). The results indicate that most Canadians

support the use of community-based sanctions such as probation and community work for a first time young offender whether he or she was convicted of a property offence (break and enter) or a violent offence (minor assault). This attitude is reflected in new youth justice legislation which clearly supports the use of measures other than court proceedings for first non-violent offences. It states that custody should be reserved for violent or repeat offences. The legislation encourages youth to accept responsibility for their actions and to make reparation to the victims that they have harmed. It also validates the needs of victims and other people affected by crime by encouraging and supporting their active involvement in responding to young people that commit crime.

Many of the principles and provisions in the new Act are derived from and endorse restorative justice. The underlying principles of restorative justice are outlined in the following section.

What is Restorative Justice?

It is believed that the term restorative justice was first coined in the early 1970s in connection with the victim offender reconciliation or victim offender mediation movement that began in Canada and quickly spread throughout North America (Belgrave, 1998, 2:1). Today restorative justice is also known as community justice, healing justice, satisfying justice, relational justice and transformative justice (Sharpe, 1998). Just as there are many names for restorative justice, there are many definitions, some of which follow.

In her book, *Restorative Justice: A Vision for Healing and Change*, Susan Sharpe (1998) contrasts restorative justice with retributive justice and says that restorative justice "...is justice that puts its energy into the future, not into what is past. It focuses on what needs to be healed, what needs to be repaid, what needs to be learned in the wake of a crime. It looks at what needs to be strengthened if such things are not to happen again" (Sharpe, 1998, 7). Howard Zehr (1990) also contrasts restorative and retributive justice. He explains that restorative justice and retributive justice can be seen as "two contrasting lenses" (Zehr, 1990, 181). Through a restorative lens, "(c)rime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance" (Zehr, 1990, 181).

The Department of Justice Canada (2001c) states, "Restorative justice is a way of viewing justice that puts the emphasis on healing relationships that have been broken by conflict and crime" (Department of Justice Canada, 2001c, 1). From this perspective, crime "...is a violation of people and relationships and a disruption of the peace of the community" (Department of Justice, 2001c, 1). Finally, the Law Commission of Canada (1999) states, "Restorative justice is less a philosophical system than a set of ideas about how justice as lived experience should be pursued" (Law Commission of Canada, 1999, 24). The Commission also adds, "Restorative justice is a response to conflict that brings victims, wrongdoers and the community together to collectively repair harm that has been done in the manner that satisfies

their conceptions of justice” (Law Commission of Canada, 1999, 25).

Each of the above definitions emphasizes the view that crime involves more than lawbreaking and each recognizes that crime is relational. As Sharpe (1998) states, “Crimes are prosecuted by the state, but it is persons who are hurt by them” (Sharpe, 1998, 8). In addition, each definition emphasizes the importance of trying to repair harm and find healing. Finally, each of the authors noted above suggest that restorative justice is about looking at crime and justice differently. It is not a program or method (Law Commission of Canada, 1999) but rather a philosophy and beyond this, a way of “living justice”.

The available literature identifies a variety of principles that are central to restorative justice yet no one set of principles exists that is universal¹. Some academics and researchers identify three principles, some identify more. For the purposes of this paper, the work of Susan Sharpe will provide much of the background for a discussion on the principles of restorative justice because it captures many of the principles identified in other sources.

Sharpe (1998) suggests that, “restorative justice reflects a belief that justice should, to the greatest degree possible do five things:

1. Invite full participation and consensus.

¹ (See Law Commission of Canada, 1999, Zehr, 1990; Belgrave, 1998; Department of Justice, 2000b; Van Ness & Heetsderks-Strong, 1997 and Sharpe, 1998)

2. Heal what has been broken.
3. Seek full and direct accountability.
4. Reunite what has been divided.
5. Strengthen the community, to prevent further harms” (Sharpe, 1998, 7).

Restorative justice proposes that, “Justice cannot truly be served without the contribution of those who are touched by a criminal act” (Sharpe, 1998, 8). Accordingly, one of the principles of restorative justice is that victims, offenders and communities should have opportunities for active involvement in justice processes (Department of Justice, 2000b; Belgrave, 1998; Van Ness & Heetsderks-Strong, 1997). Inclusive dialogue and full and voluntary participation are foundational (Sharpe, 1998). Victims need to have the opportunity to tell their story and to express their feelings to offenders about how a crime has impacted them. They need to have the opportunity to have questions answered such as, “Why me? Why did you do it?” and share their expectations about what is needed to repair the harm that they have experienced.

Offenders need to be able to explain why they did what they did, take responsibility for their actions, make reparation to the victim and be reintegrated into the community (Sharpe, 1998; The Law Commission of Canada, 1999). Finally, community members need to have the chance to say how crime has affected them (Sharpe, 1998). Community members also contribute to finding solutions that will “make right the wrong.” They are also encouraged to support the victim in finding healing and the offender in taking responsibility for their actions (Law Commission of Canada, 1999). The solutions that are developed need to be based on

consensus. Sharpe (1998) states, the decision "...must be one that reflects every party's needs and feels fair to everyone involved" (Sharpe, 1998, 8).

Another principle of restorative justice is that justice heals what has been broken. Restorative justice assumes that crime "...is a violation of one or more person(s) by another rather than...an offence against the state" (Belgrave, 1998, 2:2,3). Through this lens crime is really about injury, about broken interpersonal relationships and justice should, as Zehr (1990) states, "move these relationships toward reconciliation" (Zehr, 1990, 188). Restorative justice seeks to remove barriers between the victim and the accused through processes of repentance, forgiveness and reconciliation. It assumes that victims, other people affected by a crime and offenders need the "healing of restorative justice" (Sharpe, 1998). Sharpe (1998) states that "restorative justice does not accept continuing trauma as a given" but rather promotes healing to the greatest extent possible (Sharpe, 1998, 9). Victims can experience freedom from fear and anger by having the opportunity to talk to the offender, express their anger and pain, and as previously mentioned, have questions answered that may have been haunting them since the incident. They can be heard, feel vindicated and feel safe again (Zehr, 1990). Reparation or making amends by the offender can also help the victim to heal.

Offenders also need healing. They may experience guilt and fear as a result of their actions and may have also suffered loss (Sharpe, 1998, 9). Zehr (1990) states that the expectation that offenders be accountable for their actions can be a step toward healing and change for them

(Zehr, 1990, 188). In addition, many restorative justice academics and practitioners recognize that offenders have other needs that may have contributed to the commission of the offence that also need to be met. In many cases, offenders who commit crime have been victims of crime themselves. Knowing an offender's history does not excuse their actions but it does help to define their needs and the kinds of support that they might benefit from.

There are many secondary victims of crime including family members, neighbours, friends and co-workers of both the victim and the offender that are often affected when a crime occurs and who also need healing (Sharpe, 1998). "Justice, when seen from a restorative perspective, must address all kinds of harms rippling out from a criminal act, and must do what it can to help heal" (Sharpe, 1998, 9).

Restorative justice also seeks full and direct accountability from the offender. According to Zehr (1990), "crime creates obligations" (Zehr, 1990, 97). He states, "When someone wrongs another, he or she has an obligation to make things right" (Zehr, 1990, 197). Offenders "...are expected to explain their behaviour, and their motivation to help the victim and the community make sense of it" (Sharpe, 1998). They hear the victim's story and are encouraged to understand and take responsibility for the pain that they have caused and make reparation (Sharpe, 1998; Zehr, 1990).

If justice is to be restorative, it should also reunite what has been divided. According to Zehr

(1990), crime creates an 'us' and 'them' mentality. It diminishes and can destroy one's sense of trust and breeds fear and suspicion and thereby inhibits and damages relationships causing isolation and withdrawal (Zehr, 1990). As Sharpe (1998) states, "It seems safer to avoid people who seem unfamiliar, and the community divides against itself" (Sharpe, 1998, 10). Restorative justice seeks to build bridges and "knit" the 'us' and 'them' back together again (Sharpe, 1998, 10).

Finally, the last principle of restorative justice is that justice should strengthen community to prevent further harm (Sharpe, 1998, Department of Justice, 2000b). A key aspect of restorative justice is that it is forward looking, focusing on the future (Zehr, 1990; Sharpe, 1998; Department of Justice, 2000b). It looks at what needs to change to prevent a crime from occurring again. Restorative justice is based on the premise that crime is not simply a legal problem, it is also a social, health and educational problem (NCPC, 1995, 8). It recognizes that broader societal issues can have an impact on people's behaviour. As Bala, Bertrand, Paetsch, Hornick and Mayguns (1999) state, we often fail to recognize that "...youth crime is not only a result of family background and personal circumstances but also is reflective of the environment and the problems and situations in individual communities" (Bala et al., 1999, 1). Restorative justice suggests that we need to re-think what we mean by justice considering it in the broader context of social justice. It suggests that communities need to consider how they might contribute to both crime and peace and raises questions about societal values. It recognizes that "...issues such as prejudice, social injustice and inequity support an environment

in which crime and victimization are more likely” (Belgrave, 1998, 2.2:3).

The above principles reflect a perspective that looks at crime and justice through different lenses (Zehr, 1990). When one looks through these lenses, one sees crime as more than lawbreaking. Crime violates and hurts people and diminishes community. Restorative justice seeks to repair the harm and prevent further harm through accountability and reconciliation.

The philosophy of restorative justice has been gaining increasing acceptance in Canada and around the world. This is reflected in changes that have been made to criminal justice legislation in numerous countries. In Canada, restorative justice principles are embedded in the proposed *Youth Criminal Justice Act* where the use of community-based, restorative options are encouraged in responding to young people that commit crime.

Entry Points to the System - A Continuum of Options

There are many points at which restorative justice options can play a role in the criminal justice process. At the front end, “Restorative justice may prevent crime through public education, crime prevention programs, and having community members voluntarily enter mediation to resolve conflicts before they become serious” (Federal-Provincial-Territorial Working Group on Restorative Justice, 1999, 12). It can also assist in identifying and responding to the root causes of crime as they are revealed in a restorative program. Further, restorative justice initiatives can be offered at any stage of the justice process including the pre-charge, post-

charge, sentencing, and post-sentencing stages (Pate & Peachey, 1988). Each stage involves different representatives of the criminal justice system. For some communities, these four entry points represent a "continuum of options" (Nova Scotia Department of Justice, 1998, 8). "It is important to keep in mind that at every stage, the offender must be willing to take responsibility for his or her actions. It is also important to note that more serious cases often pass through an entry point that is more formal" (Nova Scotia Department of Justice, 1998, 8).

At the pre-charge stage, the police can refer cases to a restorative justice process. This option is emphasized particularly in cases where minor offences have been committed in order to avoid early labelling of the youth. Youth justice committees and community justice forums often take referrals for first time minor offences. For an officer to refer a case, there must be enough evidence to lay a charge and the offender must accept responsibility for his or her actions (Nova Scotia Department of Justice, 1998, 9).

Crown attorneys play a key role in the post-charge/pre-conviction stage. At this stage, they may refer the case to a number of restorative alternatives depending on the community including youth justice committees, victim-offender mediation or community justice forums. At both the pre-charge and post-charge stages follow-up is critical to ensure that the accused meets the requirements of any agreement that has been developed with the victim (Federal-Provincial-Territorial Working Group on Restorative Justice, 1999). If the offender fulfills his/her commitments to the victim and the community, the charges may be stayed (Federal-Provincial-

Territorial Working Group on Restorative Justice, 1999. If not, then the case can be referred back to the courts.

At the post-conviction\pre-sentence stage, judges can refer cases to restorative justice options. Once a case has reached the courts, it is assumed that the offence is quite serious. Sentencing circles, which have their origins in First Nations traditions, are the primary program offered at this stage. Sentencing circles provide useful information for judges as they decide on a sentence. They typically involve the victim, offender, community elders, interested members of the community as well as court officials (Law Commission of Canada, 1999). All of these people come together in a circle and provide input into an appropriate sentence for a wrongdoing (Pate & Peachey, 1988).

Finally, at the post-sentence or corrections entry point, correctional services or victims services advocates may refer cases to restorative justice initiatives. It has been argued that the proof of the effectiveness of restorative justice is in whether or not it can respond to the most difficult cases. While the post-sentence stage can include referrals for minor to serious offences, it is the most serious cases that generate the need for the most healing (Nova Scotia Department of Justice, 1998). Consequently, restorative justice programs such as victim-offender reconciliation, circles of support and accountability, and re-integration circles can "...help to meet the emotional needs of victims and offenders" (Federal-Provincial-Territorial Working Group on Restorative Justice, 1999,12).

Restorative Justice Programs

Restorative justice can take many forms. Models are adopted based on community needs, preferences and capacity. There is no specific template or design. Each is unique and has its own process with identified goals and means of achieving them. At the same time, there are four general types of programs that most restorative justice initiatives fall into. These include: family group conferences (FGCs) or community justice conferences (CJCs); youth justice committees (YJCs); victim-offender reconciliation programs (VORPs), also known as victim-offender mediation programs (VOM); and sentencing circles (SCs). Each type of model varies in its objectives and measures employed to achieve them (Pate & Peachey, 1988).

Victim-Offender Reconciliation Programs

The Victim-Offender Reconciliation program is the oldest type of restorative justice program in Canada. Introduced in Kitchener, Ontario in 1974 by the Mennonite Central Committee, the main goal of VORP was to “prevent offenders from entering the criminal justice system, either in order to streamline the system or to avoid the consequences of labeling youth as criminals” (Law Reform Commission of Canada, 1975 in Pate & Peachey, 1988, 106). Other key goals of victim offender reconciliation and mediation include encouraging young offenders to take responsibility for their actions and make amends to the victims of crime and encouraging greater involvement of victims in the justice process (Pate & Peachey, 1988, 105).

In a mediation session, a mediator facilitates a dialogue between victims and offenders and

helps them to focus their discussion on key areas (Law Commission of Canada, 1999, 25). Victims are encouraged to express their anger and pain over the incident and offenders are given the opportunity to explain their actions, learn about the impact of their behaviour and accept responsibility for the harm that they have caused. The dialogue affords an opportunity to identify ways in which the offender can repair the harm done to the victim and determine an appropriate time frame for restitution and monitoring (Law Commission of Canada, 1999, 25). The mediator assists the parties in their negotiation of a mutually acceptable agreement (Pate & Peachey, 1988, 111).

According to Pate & Peachey (1988), "the common terms of victim-young person agreements often include one or more of the following: direct monetary compensation or repayment to the victim; personal service work hours or the completion of specific tasks for the victim; service work hours to be completed for a charitable organization in the community; written or personal apology to the victim; and participation by the youth in special counseling or educational programs" (Pate & Peachey, 1988, 113). In most cases, reparation to the victim is not necessarily intended to repay the victim for the actual value of the harm they endure, rather it is symbolic (Pate & Peachey, 1988); the young person takes responsibility for his/her actions and makes amends in the hope that he/she will realize the harm they have caused and not recidivate.

Most victim-offender programs are operated by volunteers, non-professional organizations or by the province (Pate & Peachey, 1988). Each has eligibility criteria for referral of offenders

which are established by the provincial authority in each province (Pate & Peachey, 1988, 109). As with most other restorative justice programs, eligibility criteria inhibit the involvement of violent and often, repeat offenders in the program (Pate & Peachey, 1988, 109). Most offenders who are referred to mediation are first time offenders or youths who have committed minor offences. In all cases, the accused must agree to participate in the program or a charge will be laid and proceedings will begin in youth court (Pate & Peachey, 1988, 110). Finally, VOM is not an appropriate restorative justice option if the victim is unwilling or unable to participate (Law Commission of Canada, 1999, 25).

Family Group Conferences

Family Group Conferences or community conferences are “based on traditional Maori concepts of conflict resolution and on recent theoretical work about the role of shame in social control and about the need to reintegrate and not ostracize offenders” (Laprairie, 1995, 2).

There are essentially three different conferencing models: aboriginal driven, service driven and community driven approaches (Nichols, Fidler, & Ryan, 1999, 1,2). Aboriginal driven circle models such as those found in Hollow Water, Manitoba are rooted in indigenous peacemaking traditions and are run by and for aboriginal peoples (Nichols et al., 1999). Service driven conferences are run by the police services of the various jurisdictions in which they operate .

The community conferencing model entitled the Sparwood Youth Assistance Program in British Columbia is the best known example of this type of approach. Finally, the community-driven model has been adopted in Edmonton, Alberta. Community conferences are run by the

community, are multidimensional and multi-cultural (Nichols et al., 1999).

The purpose of family conferencing is threefold: to find solutions which 1) redress the harm experienced by the victim, 2) cause the young offender to take responsibility for his/her actions, and 3) restore the offender to the community. Conferences ideally involve both the victim and offender, their family members and other members of the community, including supporters, such as coaches, teachers or mentors, a police officer and volunteer facilitator in the justice process. Dialogue among all of the participants in the conference is critical to the success of the model. According to Sharpe (1998), "The conferencing process is designed to help all of the parties involved express their feelings to one another, deepen their understandings of one another, and take meaningful steps toward reparation. As a result, it helps them move toward healing and closure, and reduces the risk of future harm" (Sharpe, 1998, 31).

The theory of reintegrative shaming (Braithwaite, 1998) is closely aligned with the family group conferencing model. It proposes that "shaming" the young offender by causing him/her to realize that his/her actions affect a large number of people is key to decreasing recidivism. Victims are central to the shaming process. They put a name and face to a faceless person that the youth has wronged and often communicate the "collateral damage" of the victimization: the emotional and physical costs to the victim which are often ignored by the offender (Braithwaite & Mugford, 1994, 144). Family members, and others whom the offender respects, such as a football coach or teacher, are also important in the process of shaming.

Their role is to both “support and help the young person to take responsibility for what they have done” (Braithwaite & Mugford, 1994, 144). The offender must consider the full impact of his/her crime on others, including his/her family.

Supporters of both the offender and the victim play an important role in the reintegration of the offender as well. The supporters of the offender emphasize his/her value and the good qualities that he/she possesses so that the offender is not labeled as a “bad” person. All of the participants in the conference work together to establish a restitution agreement which the offender is expected to complete in order for he or she to be restored to the community. The ultimate goals are restitution, restoration and forgiveness.

Sentencing Circles

Sentencing circles have their origins in First Nations traditions that reflected the belief that justice should restore balance and harmony and that each person has a responsibility for helping to maintain the harmony of the community (Sharpe, 1998, 37). The first reported case involving the use of a sentencing circle in our justice system was in 1981 in the Yukon Territory (Sharpe, 1998). Judge Barry Stuart “sat with community members in a circle, following native tradition” and asked them for their help in deciding on a meaningful sentence that would help to rebuild the community (Sharpe, 1998, 37). Since that time, the use of sentencing circles has spread across northern Canada (Sharpe, 1998).

According to Sharpe (1998), there are two principles of sentencing circles. She states, "Circles assume, first that part of the responsibility for dealing with crime lies with the larger community, not just the persons and families directly affected by it. Second, the process of dealing with crime does much more than solve isolated criminal problems. It is also a vehicle for building community" (Sharpe, 1998, 37).

Circles are held after the court has determined the guilt of the offender but prior to sentencing. They typically involve the victim, offender, community elders, interested members of the community as well as court officials (Nova Scotia Department of Justice, 1998; Law Commission of Canada, 1999). All of these people come together and provide input into an appropriate sentence for a wrongdoing (Pate & Peachey, 1988). The goal of sentencing circles is to promote healing and peacemaking in the community and to see offenders reintegrated into the community (Nichols et al., 1999).

According to Gamble & Poitras (1999), there are six key characteristics of a First Nations justice circle. They are: 1) no one should be excluded; 2) everyone is equal; 3) everyone must listen; 4) the circle is a sacred gift; 4) principles of the circle are to be observed even when it is not sitting; and 5) resource people must respect their place in the circle (Gamble & Poitras, 1999, 5).

Youth Justice Committees

Section 69 of the *Young Offenders Act* states that the Attorney General of a province or his/her

representative, "may establish one or more Committees of citizens, to be known as Youth Justice Committees, to assist without remuneration in any aspect of the administration of the Act or in any programs or services for young offenders..." (Bala et al., 1999, 2).

A youth justice committee is often composed of members of the community who volunteer to work together to establish the consequences for a young offender for an acknowledged offence and monitor compliance with a given order (Ryant and Heinrich, 1988, 97-98). "These committees are meant to receive referrals of young offenders from a probation officer, the police, or the Crown Attorney and to design appropriate, but non-judicial dispositions for the young people" (Ryant and Heinrich, 1988, 97). There is no one "ideal" type of youth justice committee. They share similar characteristics and functions but reflect local values, concerns and priorities (Ryant and Heinrich, 1988, 99; Bala et al., 1999, 31). Some youth justice committees work directly with young offenders while others maintain a "distant relationship" with them (Ryant and Heinrich, 1988, 99). In addition, some are only available to first time offenders who commit minor offences while others are available to both first-time and repeat non-violent offenders (Ryant and Heinrich, 1988, 97).

Typically, a youth justice committee is comprised of three or four panel members who meet with a youth who has committed a crime and his or her parents. Committee members ask questions of the youth and decide between several dispositions when determining sentencing orders that fall within the range of alternative measures. Dispositions could include: financial restitution; community service work; mediation between victim and offender; and a letter of apology (Ryant and Heinrich,

1988, 97). The goal of the committee is two-fold: to encourage community participation in dealing with young offenders and to reduce the high levels of custody sentences for young offenders (Ryant and Heinrich, 1988, 93, 96). There were over 40 such committees in Manitoba in 1988; and a number are now under way in Ontario (Ryant and Heinrich, 1988, 97).

The Need to Proceed With Care

The philosophy of restorative justice brings many refreshing elements to the discussion regarding youth criminal justice. The emphases on the importance of dialogue, repairing harm, healing and reconciliation are just a few of the strengths of restorative justice. But no philosophy, and in particular, no practise of a philosophy will be without its flaws. Those who have studied and observed the rapid growth of restorative justice warn enthusiasts to proceed with caution. An exhaustive discussion of the criticisms of restorative justice is not within the scope of this thesis but it is important to note some of the challenges that have been raised². The following section will include a brief discussion of five concerns that have been identified. These concerns include: legal protections, net widening, power imbalances, the meaning of community and research.

Legal Protections

Restorative justice has been criticized for lacking concern for due process and proportionality of

² For a more extensive discussion concerning the criticisms of restorative justice please see Llewellyn & Howse, 1999; Lemley, 2001; Shaw & Jane, 1998; Bazemore, 1998 and Law Commission of Canada, 1999).

sentencing. On the issue of offenders and due process, the Department of Justice states (2000b), "Although the law states that their participation must be voluntary, offenders may feel pressured to take part in a program. As a result, they may choose not to seek legal advice or feel they have to admit guilt even if they believe they are innocent" (Department of Justice, 2000b, 9). It is important that accused youth are aware of their rights and able to exercise them.

Proportionality in sentencing is concerned with achieving "...penalties that are in proportion to the offence, equal for all those who commit similar offences, and no greater than is necessary given the nature of the offence" (Morris and Maxwell, 1998, 183). Morris and Maxwell (1998) state that the participation of victims, offenders and community members in a restorative process, with its emphasis on consensus decision making will likely result in different outcomes for each youth. In addition, participation in restorative justice processes may result in offenders receiving more severe consequences than what they would have received by going to court (Department of Justice, 2000c; Belgrave, 1998).

Net Widening

Another concern identified by researchers and practitioners is the issue of net-widening (Clairmont & Linden, 1998; Lemley, 2001; Belgrave, 1998). According to the Ministry of Justice in New Zealand, "Net widening is a term used to describe the impact of measures which draw more offenders into the criminal justice system or which result in greater involvement of those already in the system" (Belgrave, 1998, 5.7, 9). It has been argued that a number of cases have been

referred to a restorative justice program that would not otherwise have been addressed by the court. Further, "cases which might have previously had an early exit might proceed further in the system thus attracting additional cost" (Belgrave, 1998, 5.9.2. 13).

Power Imbalances

A third area highlighted by critics is the potential for power imbalances in restorative justice. Power imbalances can be evident in the development of restorative justice processes and in their implementation. Shaw & Jane (1998) state, "If those community members involved in restorative initiatives do not, and are not seen to represent all groups in the community, there are likely to be power imbalances in the way projects are established" (Shaw & Jane, 1998, 37). This can affect a variety of aspects of the process such as how cases are selected and the manner in which the process is conducted (Shaw & Jane, 1998). Shaw & Jane state that particular consideration needs to be paid to involving members from different cultural and ethnic backgrounds and ensuring that people from both genders are involved.

In addition, the use of restorative justice in situations where the offender may have power over the victim because of "...age, economic dependency, mental or emotional capacity, or because of the nature of the offence (such as spousal assault or sexual offences)" requires much careful consideration (Department of Justice, 2000c, 12). Llewellyn & Howse (1999) state, "Power imbalances are often difficult to detect as very often the person most in need of protection feels silenced by the power difference. Thus, setting up a restorative justice process requires listening

to the quietest voices...” (Llewellyn & Howse, 1999, 63). Some victims’ groups are particularly concerned with using restorative justice in cases of domestic abuse and sexual assault (Provincial Association Against Family Violence, Newfoundland and Labrador, 2000).

Community - What does it mean?

The term community is a key concept in restorative justice but it has not been well-defined and has received little attention in restorative justice literature (Law Commission of Canada, 1999; Lemley, 2001). Community can be a geographic area, such as a neighbourhood or town (Law Commission of Canada, 1999; Lemley, 2001). It can represent a set of values and attitudes. Phrases like “community spirit” and “community pride” reflect this definition (Law Commission of Canada, 1999). Finally, community can be represented by associations between people, such as relationships between co-workers, friends and or family members (Law Commission of Canada, 1999). Each of these different conceptions of community will have an influence on the way in which restorative justice programs are developed (Law Commission of Canada, 1999). Shaw & Jane (1998) in a report submitted to the Royal Canadian Mounted Police recommend that a careful definition of community be developed (Shaw & Jane, 1998, 37). In addition, there are certain assumptions attached to the concept of community that carry with them beliefs that communities embody common values and goals and often this is not the case (Law Commission of Canada, 1999; Laprairie, 1998). According to the Law Commission of Canada (1999), “Community is often associated with order, stability and group solidarity. But there are other sides to communities. They can be exclusionary, defined by what they are not” (Law Commission of Canada, 1999, 41).

Research

Interest in restorative justice has virtually exploded in the last 20 years but strong evaluations have been somewhat limited, particularly in Canada. Latimer, Dowden & Muise (2001) conducted a meta-analysis on the effectiveness of restorative justice practises. The researchers found that there were only three Canadian studies out of 22 that met their criteria for inclusion in the study. They also found that there were no appropriate empirical evaluations of models using sentencing circles or healing circles and there were no evaluations that considered the effectiveness of restorative justice with female offenders (Latimer, Dowden & Muise, 2001, 21). Other researchers have also identified the need for more systematic evaluations and studies (Shaw & Jane, 1998; Laprairie, 1998; Umbreit, 1998).

The aforementioned challenges facing restorative justice represent a few of the issues that need to be addressed if it is to continue to grow in strength and in credibility. Many proponents of restorative justice recognize these challenges and have been working toward developing thoughtful responses to critics (Bazemore, 1998). A key strength of restorative justice lies in its ability to respond to a number of the challenges currently facing the criminal justice system.

Restorative Justice and Retributive Justice: A Comparative Analysis

For many people, the philosophy and practice of restorative justice represents a remedy for the weaknesses that have been identified in the current criminal justice system. The victims' movement, aboriginal communities, faith-based communities and Canadian citizens more generally, have been

dissatisfied with the way the current system responds to crime. For example, victims' groups have pointed out that the existing system does not adequately meet the needs of victims of crime. Though measures have been taken to improve services to victims, such as the introduction of victim impact statements, victims still feel marginalized by the courts and the justice system, in general. The Report of the Federal-Provincial Territorial Task Force on Youth Justice (1996) noted that the Jasmin Report, indicated that, "victims believe that there is an imbalance between the attention paid to the rights and needs of young people in conflict with the law, and that paid to the interests of (direct and indirect) victims of crime" (in Report of the Federal-Provincial-Territorial task Force on Youth Justice, 1996, 12). A number of recommendations were made to improve responses to victims such as encouraging that "reconciliation between the victim and offender, reparation and compensation should be used more often" (Report of the Federal-Provincial-Territorial task Force on Youth Justice, 1996, 13).

For years, Aboriginal people in Canada have expressed frustration and disappointment at the over-representation of aboriginal people in both the youth and adult justice systems. In a one day snapshot of aboriginal inmates in Canadian correctional facilities, the Canadian Centre for Justice Statistics (CCJS) found that the proportion of Aboriginal inmates was larger than the proportion of Aboriginal adults in the Canadian population (17% versus 2%) (CCJS, 1999, Vol 19, No. 5). In addition, traditional aboriginal methods of dealing with conflict did not focus on punishment and deterrence, but rather on healing and restoring harmony. The community was actively involved in justice processes. Aboriginal peoples are seeking to return to these practices and are working

toward self-determination and control over the justice systems that affect them (Department of Justice, 2000b).

Faith-based organizations such as the Church Council on Justice and Corrections, Prison Fellowship International and the Mennonite Central Committee have been involved in public policy issues regarding the criminal justice system since the first victim-offender mediation in 1974 (Hadley, 2001a). These organizations represent the interests of victims, offenders and community members. They stand as a testimony to the importance of religion and faith in the public arena (Hadley, 2001a). Michael Hadley (2001a) states regarding faith traditions, "At issue here are value systems that provide both the context and the dynamics for integrating individuals into community: for healing, for forgiving and reconciling; for nurturing and fostering responsibility; for restoring individual dignity and peace" (Hadley, 2001a, 5).

Finally, it is widely acknowledged that Canadians lack confidence in the ability of the criminal justice system to effectively respond to crime. In addition, the system has been widely criticized for addressing crime on a predominantly one-dimensional level through punitive measures, including courts and formal sanctions that are extremely costly (Bazemore, 1998; Sharpe, 1998; Maxwell & Morris, 1998).

Many of the challenges encountered by the current youth justice system stem from the fact that it is predominantly based on a retributive model of justice. The following discussion will consider

retributive justice theory in contrast to restorative justice and show ways in which restorative justice can enhance the effectiveness of the criminal justice system.

According to Howard Zehr (1990), the philosophy of the current retributive system proposes that when an act is defined as a crime several assumptions influence our response. They include: the notion that crime is lawbreaking; guilt must be fixed; the guilty must get their "just deserts"; just deserts requires the infliction of pain; and justice is measured by the process (Zehr, 1990, 65-66). A central element in the retributive justice framework is the assumption that crime is seen as an offence against the state that is defined in "purely legal terms" (Zehr, 1990, 80). The only relevant facts of an incident are defined within the technical framework of the justice system (Zehr, 1990). When an offender commits a crime, the laws of the land have been broken and the state is the victim (Zehr, 1990).

One of the assumptions of retributive justice theory is that establishing guilt is central to the court process. It assumes that the process is one in which guilt is determined by using rules and procedures (Belgrave, 1998, 2.5.1, 8; Zehr, 1990, 82).³ Since the consequences of a guilty plea or a finding of guilt are negative and often severe, procedural checks and balances have been put in place to protect the accused from receiving wrongful punishment (Nova Scotia Department of Justice, 1998, 4). In addition, offenders and victims play a passive role in a process that is

³ While retributive justice theory focuses on establishing guilt as a primary role of the courts, in practise, most cases are resolved through pleabargains and never go to court.

dominated by lawyers and judges (Bazemore and Umbreit, 1995). Consequently, there is an emphasis on determining guilt rather than on the offender accepting responsibility for his/her wrongdoing, if in fact he/she is guilty.

The philosophy of retributive justice is built upon a definition of justice that emphasizes a "less emotional", "more rational", and "socially constructive" form of revenge (Law Commission of Canada, 1999, 20). Retributive justice "...confirms that the injured party did not deserve the original harm" by imposing a penalty on the offender that is proportional to the harm caused (Law Commission of Canada, 1999, 21).

The concepts of "just deserts" and punishment are central to retributive justice. 'Just deserts' assumes that the punishment should "fit the crime," meaning that the offender should receive no more and no less than what is deserved for committing the offence (Brunk, 2001). Punishment is seen as "...the deliberate infliction of pain, for the express purpose of causing pain as retaliation, justified in law because the person has done something bad enough to deserve it" (The Church Council on Justice and Corrections, 1996, XIV). It ensures the restoration of balance between a victim and an offender (Zehr, 1990). According to Lemley (2001), in order to balance the harm created by an offender, harm must be done to the offender. In addition, punishment also serves to "...affirm community disapproval of proscribed behaviour, denounce crime, and provide consequences to the lawbreaker" (Bazemore & Umbreit, 1995, 297).

Once a finding of guilt has been determined, the accused bears sole responsibility for commission of the offence and must pay the consequences for his or her wrongdoing. Processes are in place to determine levels of appropriate punishment for various types of lawbreaking (Lesheid, 1995).

Finally, the theory of retributive justice proposes that the process determines whether justice is achieved. It assumes that if the procedures and rules that have been established are followed "to the letter of the law" then justice has been served. Court proceedings are designed specifically to achieve procedural justice or "due process" outcomes such as equality before the law and the protection of the individual rights of the offender (Braithwaite, 1989; Zehr, 1990). In practice, achieving justice involves more than following rules and procedures.

The retributive justice model has many strengths and weaknesses. One of the strengths of retributive justice is that the categorizing of acts as illegal provides the boundaries for determining what constitutes crime and theoretically applies to all of the citizens in a community. Another strength of retributive justice is the protection of the rights of the accused. There are safeguards in place that require that an accused be assumed innocent until proven guilty. This is critical to providing protection to those who are truly innocent of any wrongdoing given that the consequences of being convicted can be serious and long lasting.

Those who do wrong are expected to take responsibility for their actions and are assumed to be morally responsible members of the community that should be held accountable for their actions

(Brunk, 2001). This is a strength of the retributive theory because it considers that those who commit crime make the choice to do so, even if the choice is limited. It does not assume that the person is sick or unable to take responsibility for their choices as other theories such as the medical model have done.

In addition, once an act has been defined as a crime, the idea that the punishment should “fit” the crime applies (Brunk, 2001). Consequently, there are generally pre-determined consequences that apply to each type of offence which are proportional to the crime (Leschied, 1995). These procedural safeguards, at least in theory, provide boundaries within which lawyers and judges must work in order to limit the potential for discriminatory and inequitable treatment.

Finally, the most important functions of the criminal justice system are to protect society and maintain social order. The law serves both a protective and a deterrent function. It exists to protect those who honour it, and to deter those who disregard it. Consequently, the retributive system reduces fear and gives people a feeling of safety - that people who break the law will be punished and further crime will be prevented so that communities can be safer places to live and work.

Yet, while there are several positive aspects of retributive justice, there are also many negative features of this philosophy of justice. In a retributive framework where crime is defined as an offence against the state, the people who are directly and indirectly affected by crime are not seen

as the real victims that they are. The emotional, physical and social impact that crime has on victims is diminished by an emphasis on the legal process. Victims are not encouraged to express emotion or to tell the offender about the emotional, physical and financial effects that the crime had on them. Instead, these things are written down on paper and presented to the court in a very dispassionate way. The court then considers the statements as evidence and overlooks the real needs (Belgrave, 1998, 2.5.3, 9; Sharpe, 1998; Linden & Clairmont, 1998). Victims often feel re-victimized by the criminal justice process as a result of this. In addition, victims rarely experience any healing or satisfaction through the punishments that are given to offenders. Even when offenders have "paid their dues" and been "justly punished" for their wrongdoing, victims still do not have a way in the formal system to have their needs met.

A second weakness of retributive justice is that the process of establishing guilt does not always benefit offenders. "It encourages many to be passive and to plead guilty in order to receive the most lenient sentence possible" (Law Commission of Canada, 1999, 18-19). It offers few incentives for offenders to accept responsibility for their offence or to recognize the impact that their actions have had on victims and those who are close to them (Law Commission, 1999; Sharpe, 1998; Linden & Clairmont, 1998).

Retributive justice results in the "labelling" of offenders which is often stigmatizing. Social science researchers argue that offenders are often stigmatized, isolated and humiliated and have limited opportunities as a result of being incarcerated (Braithwaite, 1989; Bazemore 1998; National Crime

Prevention Centre, 1997). In fact, Braithwaite (1989) argues that punishment or disintegrative shaming can actually foster criminal involvement. Further, the retributive system is short-sighted in that it gives little consideration to what will happen when an individual returns to the community after being incarcerated.

Another weakness in the retributive framework is that an emphasis on blaming or fixing guilt focuses all of the attention on the individual offender and his or her decision to commit a crime (Zehr, 1990). Consequently, guilt is fixed on one person as is punishment. One of the dangers in assuming that someone who offends does so willfully is a failure to consider the context in which wrongdoing occurs (Zehr, 1990). Human action should not be viewed through a simplistic individualistic framework that does not take into account the circumstances surrounding an incident (Zehr, 1990). Nor should it be assumed that people, including those who offend, are completely free agents. Zehr (1990) states, "Wrongdoing can be a pattern, shaped by a variety of forces, some of which are the result of choices and some of which are not. Such patterns can be difficult to break" (Zehr, 1990, 73).

Finally, a focus on individual freedom and accountability masks the responsibility that society should bear for crime and its prevention. Crime occurs within communities that promote whether intentionally or unintentionally, social and economic inequities (Zehr, 1990). Our individualistic culture downplays the role of structural inequality and therefore the responsibility that should be assumed by society as a whole, for crimes that are committed by offenders. It promotes an us-

and-them dichotomy that allows community members to judge from afar and ignore some of the common qualities that they share with people who commit crime (Zehr, 1990; Sharpe, 1998).

Restorative justice provides a fresh way of responding to the challenges that have plagued the current retributive system of justice. While there appear to be different views concerning the prominence restorative justice should have in the criminal justice system, there appears to be a general consensus that it addresses some of the shortcomings of the existing system. One of the key strengths of this philosophy is that it highlights the human and social consequences of crime. Rather than focussing solely on the law, restorative justice is concerned with the injuries to victims, communities and offenders as a result of lawbreaking. It is also concerned with healing (Law Commission of Canada, 1999, 28). In particular, restorative justice responds to some of the concerns that the victims movement has with the current system.

The needs of victims are central to restorative justice. A major assumption is that victims should play a key role in the justice process. Victims are given a greater voice and are able to express their fear of re-victimization and discuss the pain that they have experienced. They are able to ask the offender questions and develop an understanding of the offender's reasons for committing the crime. Victims are also encouraged to contribute to the development of an agreement for reparation and have the opportunity to seek closure to the event. Of particular importance is that victims experience renewed assurance of safety and satisfaction and empowerment through their involvement (Zehr, 1990, 194). Restorative justice also seeks to increase services to victims in the

aftermath of crime and increase the likelihood of financial reimbursement for the harm done (Van Ness and Heetderks-Strong, 1997). Further, where retributive justice is limited in its capacity to consider the hurt and pain that victims have experienced as a result of crime, "...the experience of restorative justice often seems to be more meaningful for offenders, victims and communities when it involves more serious offences and the loss to the victim is more profound" (Nova Scotia Department of Justice, 1998, 13).

Restorative justice also recognizes the ripple effect that occurs when a crime is committed. It seeks to involve the broader community in responding to it. Crime instills fear and anger in victims, family and friends of victims and the broader community. This can lead to isolation rather than interdependence in communities. Restorative justice provides a voice for members of the community and encourages their involvement in the restorative justice process as supporters of the victim or offender or as concerned citizens in general. They are expected to support victims, hold offenders accountable, ensure that offenders are provided the opportunity to make amends and support the reintegration of offenders into the community (Nova Scotia Department of Justice, 1998; Braithwaite, 1989).

Restorative justice also responds to the concern that offenders are not held accountable for their actions. It requires offenders to play an active role in the justice process by accepting responsibility for their wrongdoing and working with the victim and others toward a means of repairing the harm done. Offenders are encouraged to respond to the questions and concerns of the person who has

been victimized. In particular, restorative justice provides an opportunity for offenders to understand the impact that their actions have had on others through the dialogue that takes place. Through this process, they have the opportunity to acknowledge and grieve the suffering that they have caused. They also participate in determining a means to restore to the victim what has been lost.

Proponents of restorative justice argue that "...the formal state criminal justice system shouldn't, ideally, be the first response to crime (Belgrave, 1998, 2: 10). The effects of labeling on offenders, through incarceration and deterrence, is of particular concern to restorative justice advocates. As a result, they argue that incapacitation should be employed as a last resort. They also state that the need to reaccept and reintegrate offenders into the community should not be underestimated. Offenders need support in order to avoid offending again.

Restorative justice acknowledges the role that communities play in perpetuating and preventing crime. It assumes that communities own the problem of crime and must actively participate in dealing with it (Sharpe, 1998). Van Ness and Heetsderks-Strong (1997) state, "It is in this context that communities and their members assume responsibility for addressing the underlying social, economic and moral factors that contribute to conflict within the community" (Van Ness and Heetsderks-Strong, 1997, 35). The anticipated results are that community members are more involved in and satisfied with the justice process, that members become more aware of the causes of crime and means of preventing it and that communities are safer, more peaceful places in which

to live.

Finally, many writers on restorative justice attest to the importance of addressing the emotional, physical, financial and spiritual needs that arise when crime occurs. In particular, proponents of restorative justice talk about healing, forgiveness, reconciliation and peace. The current adversarial system considers the physical and financial needs of victims but often overlooks the emotional and spiritual needs of victims, offenders and communities.

Restorative Justice and Spirituality

As noted earlier, many restorative justice processes are rooted in a spiritual philosophy. Restorative justice processes around the world have drawn on religious traditions as diverse as that of North American Aboriginal peoples, the Maori of New Zealand, Jewish and Christian traditions (Hadley, 2001 b, 9). In Canada, restorative justice is rooted in two different, yet in some ways, similar belief systems: Aboriginal and Judeo-Christian spirituality. This section will discuss the spiritual roots of restorative justice through these two lenses. The spiritual beliefs of Aboriginal peoples and their practice of justice will be discussed first. An overview of the historical roots of restorative justice in Judeo-Christian belief will also be provided. This discussion will not seek to provide a comprehensive study of Aboriginal spirituality or Judeo-Christian beliefs, rather it will provide some key pillars upon which support for restorative justice has been built.

a) Aboriginal Spirituality and Restorative Justice

According to Evelyn WhiteEye (2000), an Aboriginal chaplain and Anglican priest, restorative justice was the kind of justice that ancient Elders in aboriginal communities believed in and promoted. She states, "It was not the creation of this century, but a tool of old reborn in non-Indian circles, seeking to heal and restore" (WhiteEye, 2000, 33). Traditionally, Aboriginal peoples had a different set of social values and a very different way of "seeing" and responding to crime than the European justice system. According to Leonard Manadamin (1993), the common objective of both systems is the maintenance of peace and harmony within society but the focus of each system is quite different. "The Anishinabe justice system is one that leans toward wise counsel, compensation, rehabilitation, reconciliation and balance, rather than obligatory correction, retribution, punishment, penance and confinement" (Manadamin, 1993, 69).

Traditionally, Aboriginal people had a value system that concentrated on the well being of the community as a whole rather than on individual self-fulfilment (Sivell-Ferri, 1997; Restoule, 1999). In addition, Aboriginal people do not see those who commit crime as bad people that communities needs to be protected from. Rather, they are seen as people who for some reason have become socially and spiritually estranged and need support and teaching in order to be returned to balance (Sivell-Ferri, 1997; Ross, 1992).

Further, traditionally, Aboriginal people functioned from a central belief: "the conviction that each person is derived from the Creator, is defined by the Creator's goodness, and can aspire to a

spiritual sanctity that approximates, at least in kind, that possessed by the Creator” (Ross, 1992, 174). Aboriginal people believed in the innate goodness of humanity and assumed that wrongdoing was caused by a lack of harmony within an individual (Ross, 1992). There was a strong emphasis on the responsibility of the community to support and encourage those who harmed others with a goal toward healing and rehabilitation (Ross, 1992). According to Ross, “each person and each community is under the Creator’s duty to offer... assistance when it is needed” (Ross, 1992, 174). These values and teachings are found in the Medicine Wheel. According to the teachings of the Elders, the survival and prosperity of Aboriginal people is in the Circle/Medicine Wheel (WhiteEye, 2000, 33). Many North American Aboriginal people use the Circle but it is expressed differently by different tribes (WhiteEye, 2000, 34). Accordingly, there are a number of different names used to express aboriginal ways. They are: the four directions, the four grandfathers, the four roads and the four teachings (WhiteEye, 2000).

WhiteEye (2000) states, “The Circle teaches us that we are all a part of Gitche Manitou’s family. The Circle represents all the races. In the North - white; the South - red; the East - yellow, and West - black” (WhiteEye, 2000, 34). “The Circle also teaches us about the four gifts. In the North - fire; the South - air; East - earth\soil; and the West - water, thus the gift of life, each of us participates in the gift of life” (WhiteEye, 2000, 34). The elements that make Aboriginal people who they are is also expressed in four. WhiteEye (2000) states, “From the North is mental well being; South is emotional well being; East is our physical well being; and from the West our spiritual well being. All the Circle working together to make a well rounded, healthy human being, equal

with all" (WhiteEye, 2000, 34). The central concept of the Medicine Wheel is interconnectedness. The Circle represents the way in which all people are connected to the Creator, to the spirit world, to creation, to one another and to other cultures.

In all Aboriginal teaching, there is an inherent assumption that a spiritual dimension exists and influences daily life. Ross (1992) states, "For many Native people, the spiritual plane is not simply a sphere of activity or belief which is separable from the pragmatics of everyday life; instead, it seems to be a context from within which most aspects of life are seen, defined and given significance" (Ross, 1992, 55). This spiritual view of life is inextricably linked to the way in which Aboriginal people have traditionally responded to crime. Elersma (2001) confirms this view when she notes that Aboriginal justice considers the relationships of those affected by a crime as interconnected with Aboriginal spiritual teachings, ceremonies and social life (Elersma, 2001, 5). From this point of view, "Justice... is a lifestyle, a belief system, and a worldview" (Elersma, 2001, 3).

This worldview is built on Aboriginal beliefs and customs. Historically, the social structure of Aboriginal communities was defined by clans or tribes that each represented a sacred circle. According to Dumont (1993), "The Anishinabe Clan System is described both as a Great Law and a form of social and political government" (Dumont, 1993, 74). There were seven original clans (Dumont, 1993, 76). Each clan represented a different form of leadership that the members would fulfill. Within a clan each person had a role to perform and if they did not fulfill their role, the circle

would be broken (WhiteEye, 2000, August). The health of a tribe was dependent on the quality of the relationships among individuals in the community (Sivell-Ferri, 1997). Consequently, when a member of the clan became disconnected from the community through wrongdoing, members of the community focussed on supporting the offender in returning to balance and harmony (Lancaster, 1994).

According to Lancaster's research in one First Nation community, the Chief and other key leaders in the community such as Elders and spiritual leaders played a key role in responding to wrongdoing. They would meet with the offender and discuss the individual's responsibility to the community and to their Creator (Lancaster, 1994, 341). The meeting would include teaching and counselling. If additional supports were needed, they were provided. Through the entire meeting ran the thread of spirituality. The spiritual leader would speak last and the meetings always ended with a prayer (Lancaster, 1994, 341). In addition, gifts were given to the offender at the conclusion of the meeting to assure the individual that they were a valued member of the community (Lancaster, 1994, 341).

Colonization had a serious and deleterious effect on Aboriginal peoples and their traditional ways, but there has been a resurgence of Native ceremonies. These practises are beginning to form the basis for the way in which Aboriginal people are responding to wrongdoing and crime. Many aboriginal people are drawing on their spiritual and cultural history and seeking an alternative to the current Euro-Canadian justice system. Consequently, today in many First Nations communities in

Canada. Aboriginal people are seeking to develop their own systems of justice that include returning to their traditional ways of holding meetings with offenders, Elders and the community. They seek to respond to crime and wrongdoing in a holistic way that brings healing and a return to harmony and balance for the individual and the larger community. Sentencing circles, peacemaking circles and healing circles are some of the practises that are being used. These processes are grounded in the spiritual beliefs of Aboriginal people and have obvious spiritual elements to them such as opening and closing the circle with prayer. Judge Barry Stuart states (1996), "Opening the circle with prayer introduces the spiritual character of the circle process... The prayer offered by Elders or others chosen by Keepers of the Circle are non-denominational, and often combine the elements of Christian and aboriginal spirituality" (Stuart, 1996, 171).

While sentencing circles and other forms of the circle process have been some of the common processes used in promoting aboriginal justice, other faith traditions may use different processes. For example, the Christian community adopted victim-offender reconciliation programs and various conferencing approaches as a means of responding to crime.

b) The Judeo-Christian Roots of Restorative Justice

Restorative justice was first introduced in Canada by the Mennonite community in 1974 in Elmira, Ontario through the establishment of a Victim Offender Reconciliation Program. The goals of that program reflected a very different understanding of justice than what was being communicated by the formal criminal justice system. The Mennonite community recognized that crime creates some

very specific justice needs. Chris Marshall (2000) identifies two immediate needs created by crime that demand a response: "1) we want to see the person who has harmed us caught and held accountable; and 2) we long to see the damage undone, to heal the damage" (Marshall, Conference, 2000). The current retributive system of justice responds to the first of these needs but not the second. The Mennonite Central Committee adopted a paradigm of justice that sought to meet both of these needs.

Historically, there has been support for both retributive and restorative forms of justice in the Judeo-Christian faith. Much of the support for retributive notions of justice arose out of studies of the Old Testament. Many scholars argue that a more complete study of the Bible, with an emphasis on the New Testament, does not support retributive justice but in fact, "advances the claims of an alternative, non-violent way of life"(Gorringe, 1996, 265).⁴

Biblical justice is understood through two main concepts: shalom and covenant (Zehr, 1990). The word shalom is a term used often in the Hebrew scriptures. It has been defined as "...completeness, fulfilment, = wholeness – the existence of right relationships among individuals, the community, and God. It is the ideal state in which humans were created to live" (Lerner, 1980, 1). The word shalom encompassed material, physical and social wholeness and well-being. When crime and wrongdoing occurred, shalom was broken - relationships were damaged and healing

⁴ See also Christopher Marshall (2001) Beyond Retribution: A New Testament Vision for Justice, Crime and Punishment.

was needed. In order to restore shalom, restitution was necessary. The word restitution in Hebrew is *shillum* and derives from the same root word as shalom. The goal of *shillum* was always to restore peace in the community. *Shillem* was also critical in discussions of crime and justice. It is also derived from the same root word as shalom and *shillum* and means "retribution" or "recompense" (Lerner, 1980, 1). Retribution in this case does not mean revenge or making someone pay for the wrong that they have done as an end - punishment for the sake of punishment. Rather, an important aspect of seeking justice was to vindicate or restore the victim. Consequently, the goal of the justice process was reconciliation - to restore people and relationships. (Lerner, 1980, 2; Marshall, 2001; Zehr, 1990).

The concept of shalom is also present in the New Testament in the Greek word *eirene*. It is defined as "peace between people and God and between people themselves on a variety of levels" (Zehr, 1990, 132). Zehr (1990) states that the life, teachings and death of Christ set an example of shalom. His life and ministry were directed toward seeing relationships restored between people and God and between people themselves. Christ also represented the importance of covenant - a second key concept in biblical discussions of justice.

According to Zehr (1990), "In the biblical milieu, a covenant was a binding agreement made between two parties. Covenants assumed a personal relationship between parties and implied certain reciprocal responsibilities and commitments" (Zehr, 1990, 133). One of the most well known covenants in the Old Testament was the covenant at Mount Sinai where a loving and

merciful God provided His people with laws (the Torah) to follow as a pattern for living in shalom (Zehr, 1990). The establishment of the covenant followed God's saving act of delivering the Israelites from slavery in Egypt (Zehr, 1990). In giving the law, the intent was that God's people were to "imitate God's actions showing compassion to those in need" (Marshall, 2001, 51).

According to the New Testament, the life, death and resurrection of Christ formed the basis of a "new" covenant (Zehr, 1990). "Through acceptance of the person and mission of Jesus, believers enter into a "covenant" (that is, an ongoing relationship)...for the forgiveness of sins"⁵ (Marshall, 2001, 75). As part of this new covenant, "Jesus calls his followers to bring God's royal justice to earth, a healing justice that puts right what is wrong. It is also a suffering justice, one that is prepared to endure wrong without retaliation and to practice costly forgiveness for the sake of reconciliation" (Marshall, 2001, 72). This new act of deliverance by God is redemptive; it is God restoring people to Himself and bringing about shalom.

While much of the literature on restorative justice implies the existence of a spiritual dimension in restorative justice, little research has been done to consider its relevance, if any to the practise of restorative justice. Michael Hadley (2001b), states, "Significantly, with the exception of specialized Christian studies, the relationship between spirituality and criminal justice has been largely overlooked in current scholarly and popular accounts in the Restorative Justice arena" (Hadley,

⁵Matt. 26:28.

2001 b. 2). The purpose of this thesis was to explore whether or not there is a role for spirituality in restorative justice programs.

CHAPTER III

METHODOLOGY

III. METHODOLOGY

This research was exploratory in nature. An inductive, process driven approach was adopted based on qualitative methodology and some of the principles of grounded theory (Glaser and Strauss, 1967). For example, grounded theory proposes that theory including conceptual categories and hypotheses be generated through comparative analysis. I proposed to conduct a comparative analysis of restorative justice programs which had a spiritual component and those which did not. In addition, one of the assumptions of qualitative methodology is that the information gleaned from people who “tell their own stories” takes precedence, at least initially, over the importance of theory (Gubrium and Holstein, 1997, 34).

The ultimate goal of this thesis was to assess: (1) the role, if any, of spirituality in restorative justice programs. In order to answer these research questions in-depth interviews were conducted with a number of participants and directors/mediators of restorative justice programs in order to do a comparative analysis of programs that had a spiritual component and those that did not.

Although there are a number of different restorative justice programs operating in Canada, four specific types of restorative justice practises were the focus of this analysis. Typically, sentencing circles and victim-offender reconciliation programs have their roots in spiritual traditions. On the other hand, many family group conferences and youth justice committees do not seem to have such a dimension, giving little consideration to the role of spirituality in restorative justice. I intended to conduct key actor interviews with up to 25 people who had been involved in sentencing circles,

victim-offender mediation, family group conferences and youth justice committees as either participants or facilitators of processes in Eastern Ontario. My goal was to conduct half of the interviews with participants and directors from programs that involve a spiritual dimension, namely, sentencing circles and victim-offender reconciliation programs and half with participants and directors of programs that do not such as youth justice committees and family group conferences. The ultimate goal was to conduct six interviews with either participants or program facilitators in each of the four programs.

The geographic area that was selected for this project was originally designed to research restorative justice programs in Eastern Ontario and to span from Peterborough to the south, Hawkesbury to the East, North Bay to the north, and Parry Sound to the west. This decision was made because the researcher was seeking to conduct face-to-face interviews as much as possible while at the same time, endeavouring to keep expenses and time commitments for traveling to a minimum.

A snowball sample technique was used to develop a list of potential interviewees. This was done mainly because the field of restorative justice is relatively new and there are no master lists which identify all existing programs and their characteristics. In order to develop an initial list, the researcher contacted several organizations and government departments, both federal and provincial to obtain information on restorative justice programs in Eastern Ontario and in the province overall. The information sources that were chosen were intended to identify both secular

and spiritual programs. Six people were contacted that represented different government departments including: the Aboriginal Justice Strategy, the National Crime Prevention Centre, the Royal Canadian Mounted Police, the Correctional Service of Canada, the Department of the Solicitor General and the Ministry of the Attorney General for the province of Ontario. Four national/provincial non-governmental organizations were contacted as well including: the Mennonite Central Committee, the Church Council on Justice and Corrections, the St. Leonard's Society of Canada, and the Ontario Federation of Indian Friendship Centres Justice Programs. In addition, some programs were identified through contact lists obtained at conferences on restorative justice.

In the end, most of the contacts for programs were selected from a resource tool developed in 1998 by the Correctional Service of Canada entitled *Inventory of Self-Identified Canadian Restorative Justice Initiatives* that was being compiled at the time this research was in progress. It is interesting to note that this document was never completed - the reason given was that the programs were developing and changing too rapidly to record.

At the outset, it became clear that restorative justice programs are a relatively new phenomenon in Ontario, particularly, family group conferencing and sentencing circles. Consequently, it was difficult to find a sufficient number of programs in Eastern Ontario alone. Many of the programs are new or are just being implemented. As a result, the original geographic boundaries were extended to include projects in Central Ontario where programs have been in operation for a greater length of time.

In addition, it also became clear that the arbitrary distinction that I had made between programs that had a spiritual dimension and those that did not was too simplistic. In fact, the programs themselves did not define whether or not the process had a spiritual emphasis. The people participating in the process did. For example, Aboriginal communities, many members of which have strong spiritual beliefs, have adopted sentencing circles, community tribunals and community conferencing as means of addressing crime in their own traditional ways. Consequently, with the limited number of sentencing circle processes in Eastern Ontario, interviews were conducted with members of Aboriginal communities who participate in other processes as well.

In all, 40 people were contacted representing 30 restorative justice initiatives. Twenty interviews were conducted with mediators/directors and/or participants from twelve different programs. Three of the people contacted indicated that their community did not yet have a restorative justice program in operation but there was interest in developing one. Five people stated that in their community, a restorative justice program was just getting off the ground. The organizations were at different stages of readiness with respect to providing restorative justice options. For example, one of the organizations had developed a community committee to talk about how restorative justice could be implemented. Another organization had developed an advisory committee and had trained facilitators but had not yet had any cases and . The other two organizations had developed their advisory committee, trained volunteer facilitators and had done one or two conferences. In one case, the organization stated that their program was not a restorative justice program. In another case, a representative of a restorative justice program refused to participate in the project.

She noted that the program in her community is funded by the government and required intensive evaluations from participants. She did not want to ask any of them to be part of any other studies. Finally, nine of the people contacted did not respond to the researcher's request for information. Up to three calls were made to each organization.

In order to conduct the research, two interview guides were designed (see Appendix), one for participants and one for directors/mediators of programs, to elicit information about the relative importance of spirituality to the processes which underlie restorative justice programs and to those who participate in them. The interview guide was semi-structured including both open-ended and forced response questions. The questions were designed to explore the role of spirituality in the conception and implementation of restorative justice practices.

A clear, operational definition of spirituality was not provided for the purposes of this research. Instead, the meaning of spirituality was shaped by those who were interviewed. It was the interviewees, who in "telling their stories", defined what spirituality and being spiritual meant to them. It was assumed that the meaning would be very elastic. It might represent an individual's belief in a higher power who has the ability to judge and forgive behaviour. The term could also represent biblical or Aboriginal conceptions of justice that assume the paramount importance of forgiveness and restoring harmony. It might include feelings and emotions that reflect a feeling of connectedness with people and/or with God, in the Christian belief and Kitchi-Manitou in Aboriginal spirituality. Finally, the definition of spirituality might incorporate expressions such as

prayers and ceremonies, such as sweet grass ceremonies, that have been closely identified with people who espouse Aboriginal spiritual beliefs.

CHAPTER IV

DATA ANALYSIS

IV. DATA ANALYSIS

In this section, the results are presented of interviews conducted with 20 participants and facilitators/directors from 12 restorative justice programs. The results are presented in three sections. Section A provides a general description of the types of restorative justice programs, roles of participants and the length of programs along with a number of other elements. Following this, results of questions asked concerning the success of programs and the positive and negative aspects of programs will be discussed. Section C deals with questions concerning three specific aspects of restorative justice programs - repentance, forgiveness and reconciliation. Finally, Section 4 considers the question of spirituality in restorative justice programs.

A. General Description

i) Types of programs

Interviewees were involved in a variety of restorative justice programs. As the methodology indicates, the researcher intended to conduct interviews with participants and directors/mediators of youth justice committees, family group conferences, victim offender mediation or victim offender reconciliation programs and sentencing circles. It quickly became clear that restorative justice programs cannot be neatly packaged. They are developed based on the specific needs, resources and preferences in each community.

Six interviews were conducted with people involved in two youth justice committees (YJC's). One of the YJC's used a panel approach while the other used a conferencing approach. Five interviews

were conducted with participants and directors/mediators of family group conference programs which also went by the name of community justice circles, gatherings and community justice forums. In all, five interviews were conducted with participants and directors/mediators of various victim offender mediation models. One interview was conducted with a director/mediator of a victim offender mediation program, three interviews involved participants and the director/mediator of a victim offender reconciliation program and one involved a director/mediator of a victim young offender mediation program that used a co-mediation model, where a youth mediated alongside an adult for cases involving young offenders. Finally, as mentioned in the methodology, there are very few restorative justice programs in Ontario that involve sentencing circles. The researcher found that Aboriginal communities use a variety of models in their justice processes. One interview was conducted with the director/coordinator of an aboriginal tribunal. Two interviews were conducted, one with a participant and one with the animator of what the respondents called a community gathering and the final interview was conducted with a court worker in a native community council project⁶.

⁶ The court worker worked specifically with adult offenders in this program. The director of the program discussed with his staff who would be the best person to participate in the interview and it was decided that this person would be the best choice. When asked if it would be possible to speak with the youth worker, I was informed that the youth worker had just left for another position and that the new person had just been hired so there wouldn't be anyone to speak to that worked directly with this program. The director informed me that the programs were virtually the same and were based on the same principles.

ii Roles of participants

In all, twenty interviews were completed. Eight interviews were conducted with people living in large urban centres, five involved interviewees working in restorative justice programs in cities, four interviewees were involved in programs in towns and three interviewees represented programs in First Nation communities. Eight of the interviewees were men and twelve were women. Nine of the interviews involved people that had participated in a restorative justice program and eleven were conducted with facilitators/directors of programs.

Involvement of participants in this research was dependent on the willingness of directors/mediators to provide the names of people that might be willing to be interviewed. The researcher asked directors/mediators if they would be willing to provide the names of participants that could be contacted. It was hoped that interviews could be conducted with victims and offenders that had participated in processes but in almost all cases, this did not happen. In some cases, directors/mediators did not provide any further contact information. And in some cases, due to issues of confidentiality regarding young offenders and concerns that organizations expressed regarding sensitivity to victim needs, they did not feel that it would be appropriate to contact them or to provide me with any information. As a result, there was only one interview conducted that involved a victim and in that case, the person was a victim representative.

For the purposes of this research, a “participant” in a restorative process was defined generally, as a person that had been involved in a restorative justice process such as the victim, the offender,

supporters of either the victim or offender, community members (i.e. the arresting officer or a greeter or host), panel members sitting on youth justice committees and facilitators/mediators of processes. The "director/mediator" was defined as the person in charge of the restorative justice program. Two separate interview guides were used to reflect this distinction. The researcher based her decision regarding which set of interview questions to use on the interviewee's decision about whether or not they would want to be considered as a participant or as a director/mediator and on whether or not the person was the primary contact for other respondents. If the latter was the case, then in all but one case, the researcher asked director/mediator questions to persons that appeared to be running the program.

As the research progressed, it was clear that these distinctions were too simplistic. In one case, the interviewee spoke as a parent who had participated in a conference involving her ten year old son but also spoke as a mediator, trainer and facilitator of restorative justice processes involving both youth and adults. In another interview, a facilitator in a restorative justice program defined themselves as a director while in another, a person that had clearly been involved in an administrative capacity defined themselves as a participant. Consequently, the categories are somewhat fluid. This difficulty may have arisen due to the fact that one set of questions in the interview guide was titled "director/mediator interview questions." This connection between the two roles may have resulted in confusion on the part of interviewees as they thought about their primary role.

The roles of the participants were varied. Two of them were panel members on a youth justice committee. One of the panel members had also been a greeter and a meeting chair. As previously mentioned, one of the participants was a victim representative. Four of the participants fulfilled several roles in the program. For example, as previously noted, one panel member fulfilled three roles. Another participant was a youth justice committee chair and conference facilitator. One interviewee defined their role as mediator, volunteer and board member. Another identified herself as a worker, community member and supporter as an extended family member. Other roles that the participants played included: offender supporter, co-facilitator and trainer.

The role of the director/mediator involved a number of functions. Broadly, the functions can be separated into three categories: case management, program management and facilitation/mediation. Case management tasks included: receiving referrals, conducting an initial assessment of a case to ensure that it was appropriate for the program, making initial contact with the involved parties, assigning mediators and doing follow up and monitoring. The program management category included activities such as resource development, program development, volunteer coordination, program promotion and liaising with community organizations, governments and criminal justice personnel. Finally, the facilitation/mediation category included preparing for a restorative process and facilitating a process.

Respondents in the director/mediator category used many different terms to define their role including: overseer, administrator, coordinator, animator, case manager, director of agency,

facilitator or mediator of restorative processes and participant. As was the case with participants, many directors/mediators fulfilled more than one role. The roles of five interviewees included case management, program management and facilitation/mediation activities. Four interviewees stated that they were case managers, program managers and active participants in processes. One respondent (018) said, "...that's the beauty of this process is that you can be both and often you end up being both...There aren't any bystanders. I don't think there's ever anyone in the circle who is not affected by the process." Finally, two interviewees identified themselves as facilitators but based on the descriptions of the functions that they filled, it appeared that they also managed cases and managed the program that they were involved in. In two cases where the director/mediator of the program filled all three of the identified functions, the interviewees stated that they did 99 percent of the facilitation/mediation because they did not currently have a strong enough volunteer resource base.

It was clear through the interviews that both staff and volunteers in restorative justice programs wear many hats and this was not specific to rural communities where there might be fewer resources. This was also the case in cities and major urban centres as well. This may be due in part to the fact that restorative justice is a relatively new area that is not yet well-resourced by governments and/or communities. The importance of having sufficient and well-trained human resources for restorative justice initiatives has been identified as one of a number of factors consider when developing restorative justice programs (Linden & Clairmont, 1998; Sharpe, 1998).

iii Length of programs

A number of the programs had been in development for at least a year prior to actively facilitating any restorative justice processes. Most of the programs, (five of the eleven), had been facilitating processes for between 18 and 30 months at the time this thesis was written. The newest program, the youth community council program, was the most recent program having been in existence for six months and the oldest program, a victim-offender reconciliation program, was 20 years old. The programs in the Aboriginal communities in all cases were more established than the other programs. The programs in these communities were on average, four and a half years old at the time this research was undertaken. Two of the eleven programs are no longer in existence. Both of them were in the same community. In both cases, there were difficulties with securing support from criminal justice partners.

iv Participant involvement in programs

In the “participant” interview guide, respondents were asked why they became involved in the restorative justice program. A variety of reasons were given and most respondents gave more than one. In all, seven response categories were identified. The most common reason, given by three of the nine respondents, was that they wanted to support youth. Belief that the program was good for youth, that it was good for the community and that giving something back to the community was important were each identified by two respondents. Interest in the program and a belief that the traditional system was not as effective as restorative justice were also identified by two interviewees. Other reasons for involvement included: “it works”, the location of the program was

convenient, "I was asked to" and one respondent (007) stated, "I needed to practise what I preach."

v Source of Referral

Directors/mediators of programs were asked to identify how cases were referred to their program. A number of responses were given since many restorative justice programs receive referrals from a variety of sources. Referrals from Crown Attorneys (7), the police (6) and judges (4) were identified most often. In two cases, directors/mediators stated that the Crown Attorney was their primary referral source. Three respondents stated that they received referrals from probation, three stated that they received them from duty counsel and two stated that some of their cases were self-referred. Two respondents identified the court, generically, and lawyers, in general, as providing referrals. Referrals were also received by word of mouth, from other aboriginal agencies, from parole, youth protection officers, victim-impact statements, security guards and "elsewhere." Finally, one respondent stated that most of their referrals came when they went to the court house to ask people from their community if they needed any help.

Only six of the eleven respondents indicated points of contact with the criminal justice system in their answer. Again, referrals could be received at a number of different points in the criminal justice system. Pre-charge (5) and post-charge (4) referrals were the most common responses given. In three cases, respondents stated that most of their cases were post-charge and that their program either required it or that they preferred receiving post-charge cases to ensure

accountability of offenders. Two of the three victim-offender mediation/reconciliation programs did not handle pre-charge cases. Respondents also noted that they received referrals at post-sentence, post-conviction, and conviction. Finally, one respondent stated that they received referrals at “whatever stage the perpetrator was in” excluding the pre-charge stage.

vi *Criteria for Referral*

There were a variety of criteria that were identified by directors/mediators for referral to programs which reflects the diversity of programs that exist. Some programs had relatively stringent criteria while others allowed more flexibility. In general, family group conferencing models and youth justice committees dealt with minor, first or second offences while victim offender mediation programs and Aboriginal justice programs dealt with a broader range of offences and would accept youth that had committed subsequent offences.

The most common criteria for referral were that the accused or the offender was between the ages of 12 and 17 and that the young person accepted responsibility for their actions. Six respondents identified these criteria. Three programs required the youth to agree to participate. Other criteria included the need for: the youth to show remorse; victim input to be taken into consideration; and a real and identifiable victim existed. Another criteria was that the location of the offence which included where the offence took place in the community offering the program, but also that clients lived in that community. Two interviewees mentioned these criteria for each of the above criteria. Where an identifiable victim was a criteria, both of the programs were victim-offender mediation

programs. Where input from the victim was required, the programs involved Aboriginal people.

With respect to offences, four of the twelve programs represented accepted first offence cases only. One program accepted first offence cases most of the time but also had some flexibility in accepting second offences that met specific criteria. Another program accepted first or second offences but did not accept cases where the youth was a chronic offender. Two programs accepted cases where subsequent offences had been identified. In one program, the youth was not accepted into the program after committing another crime unless they had complied with their previous agreement. Finally, one director/mediator stated that her program accepted subsequent offences but if the offender was before them for a third offence that indicated a pattern of offences, they would be banished from the process.

The types of offences considered by programs also varied considerably. Four programs considered minor offences, three with some flexibility. Some of the offences that would be considered included: minor assault, fraud, mischief, and theft under \$5,000. Four programs considered a broad range of offences that excluded certain serious offences such as murder, rape, domestic abuse and drunk driving. One director stated they their program accepted all offences at all stages of the criminal justice system. Another director did not know the criteria for cases that were referred to his program because they were referred by the Crown Attorney. In a number of cases (six), the influence of the Crown on cases that were referred to the programs was obvious. In two programs, the staff were willing to take cases that the Crown was unwilling to refer.

Other criteria for involvement in a process included: the availability of community resources to meet the needs of clients; that harm was done; that the youth had the ability to represent him/herself; that the youth had a right to legal counsel and that no pre-screening by staff was done for cases.

In a number of cases, it was clear that the formal justice system played a critical role in the success of programs. As previously mentioned, two of the restorative justice programs discussed in this thesis no longer exist and this was in part due to lack of support from criminal justice personnel. In one of these programs, the director/mediator was not aware of the criteria used to determine whether or not cases would be referred to his program. They were determined by the Crown Attorney. Another director/mediator noted that while her program generally does not accept pre-charge cases, the organization has done so in order to maintain a positive relationship with the Crown Attorney.

These results are consistent with the literature on restorative justice. Stuart (1996) and Linden and Clairmont (1998) noted that "giving up control" is a challenge for the mainstream justice system. Linden and Clairmont (1998) state that, "...often a community's ability to implement alternative programs depends on whether or not they can negotiate the cooperation of local police and court officials who must agree to change their normal way of dealing with cases" (Linden & Clairmont, 1998, 6). Restorative justice programs will not enjoy success unless strong partnerships are forged with the criminal justice system. Education is critical as is developing understanding between partners working in the justice arena concerning the roles that each partner

plays in promoting community safety.

vii. *Typical Participators*

There is not one universal restorative justice program. Even among program models, there are variations in criteria for referral, as noted above, and in the people involved in a process. At the same time, there are similarities among programs within models and across models. The responses provided by the respondents concerning typical participators in youth justice committees, family group conferences and victim offender mediation processes were generally consistent with the available literature.

The typical participators in a youth justice committee process where a panel was used were: the youth, one or both parents, four community members including a greeter, the program coordinator and two panel members and sometimes advocates or friends. Victims are invited but rarely participate because most of the cases involve shoplifting. In this particular program, no police are invited to participate.

In the youth justice committee process that used a conferencing model, there were more people involved. They included: the youth, one or both parents, three community volunteers including a primary facilitator, a co-facilitator and a community member, supporters of the offender, and the police when possible. Victims and victim supporters are invited to attend but again, because the cases typically involve shoplifting, victims rarely attend. On occasion, a store manager or security

guard acting as a victim representative, will participate.

There were four family group conference models represented in this research. Many similarities were identified among people involved in these processes. Each included: a victim and offender, one or both parents from each side (if both the victim and offender were youth), supporters of the victim and supporters of the offender - these were typically friends, relatives, and/or school personnel, and a facilitator. Three of the programs involved witnesses and others affected by the incident. For example in one program, if a youth vandalized a school, the facilitator would invite a parent council member to attend the conference. Two of the four programs involved the arresting police officers. Two programs also had two facilitators. One of the four programs invited observers and counsel to the conference although the observers did not actually participate in the process. This program also involved three hosts or greeters from the faith community. Another program would allow mentors to stand in for parents where the youth was not likely to receive support from one or both parents.

The victim, offender and a mediator were typically represented in the three victim-offender mediation or reconciliation programs. Occasionally, supporters of the offender or victim would participate or be there to support but not necessarily be in the room where the mediation was taking place. In one program where family mediations were done, there were typically more participators and often two mediators were involved. The victim young offender program uses a co-mediation model that involves both a youth and an adult as co-mediators where possible,

when dealing with cases involving youth.

The three Aboriginal programs that were represented included a community gathering, a tribunal and a community council. The composition of the community gathering is very similar to the conferences mentioned above. People involved in these processes typically include: the victim (if they choose to participate) and offender, offender supporters and victim supporters, a facilitator and interested community members who may have a stake in the offence. Generally, a community leader and an elder will participate as will extended family members. In addition, workers who worked with the offender and the victim participate. Interestingly, the gathering is announced to the entire community so that anyone in the community can participate if they wish. Consequently, a gathering usually involves 15 to 20 people and sometimes more.

The tribunal and community council are similar in composition to the youth justice committee. The council has three council members, the offender, a staff member, support people if desired and an elder participates where possible. The victim is not usually present. The offender, a three member tribunal, a staff member, and supporters if desired, are generally present during a tribunal. One key difference between the community council and the tribunal is that victims usually participate in tribunals. In addition, tribunals usually involve other resource personnel such as a child protection officer or technical support people.

viii Goals

When asked what the goals of the program were, directors/mediators and participants provided a whole host of responses that were categorized under five headings: overarching goals, goals for offenders, for victims, for the community and for parents.

The most common goal cited by seven interviewees was to help people restore relationships and repair the harm done. Two respondents stated that increasing understanding of what happened was important and two people stated that one of their goals was to provide a forum for people to talk about crime and its impact. Other goals that were identified included: closure for participants and giving participants tools to help them resolve conflict in the future.

Most of the overarching goals were also woven into goals for specific participants in restorative justice processes. There were eight main goals for the accused or offending youth. The most often cited goal, by eight respondents, was for the youth to recognize that they had done something wrong and accept responsibility for it. Understanding the impact of their actions on others including their parents, victims, the community and themselves was cited by six respondents. Also important was helping the youth to reduce or avoid contact with the criminal justice system. Five respondents mentioned this goal. Having the opportunity to participate in the process and tell their story and having the opportunity to make amends and try to repair the harm were goals mentioned by four respondents and three interviewees stated that showing remorse was important. Interviewees also stated that having closure, putting the offender back in a good mind, and addressing what got them

there in the first place were important goals.

With respect to victims, the most often cited response (by five respondents) was having the opportunity to express the impact of the crime and to be able to ask questions of the offender. Having a role in shaping the outcome and having closure were goals that were mentioned by three respondents. Receiving compensation or reparation was another goal that was mentioned by two respondents as was the need to restore balance or restore the mind of the victim. Other goals for victims included hearing how others were impacted by the crime - knowing that they weren't alone, having a sense of satisfaction that something was being done and being assured that the incident would never happen again.

Four respondents felt that for the community, the most important goal was having the opportunity to play a role in the process by sharing how they were impacted by the incident, hearing others views and helping to develop the agreement. Three respondents also felt that knowing that something was being done was a key goal. Two respondents, both from a youth justice committee, stated that saving taxpayers money was a goal of their program. Community ownership of justice was cited by two interviewees. In addition, restoring balance or bring healing to the community, having closure and educating the community were also goals that were mentioned.

These findings are consistent with the literature on restorative justice. The overarching goals reflect the desire to repair harm done and restore community harmony. For offenders, this means

accepting responsibility for their actions and understanding the impact that their actions have had on others. For victims, it means having the opportunity to express their frustration, anger and pain at being victimized. It also allows them to have a say in what happens and bring closure to the event. Finally, for communities, it provides an opportunity to play a role in justice processes.

B. What works, what doesn't?

i) Elements of successful programs

When directors/mediators were asked what made their program successful, six out of the eleven respondents stated that committed, skilled and caring staff and volunteers made their program successful. Respondents identified several qualities of facilitators/mediators and program coordinators that are important if programs are to be successful. When speaking about facilitators, respondent (009) stated, "They have to be competent, to be able to handle very difficult circumstances, be neutral, as neutral as possible." Respondent (009) also said that facilitators have "to be creative, something of an artist - a person who is skilled in people skills. It's something like a drama - you want people to get something out of the drama." Another respondent (011) stated that she had just received a letter from a victim. In the letter, the victim noted the patience of the two mediators. When asked this question, respondent (015) stated, "I just have to blow my own horn here. You're telling me I have to. I think it's the approach. You have to have somebody that can pull it all together, that can work with a large population of people... What you have to do is really support the community and when you can do that, then they want to and they're able to support the program." Respondent (020) noted that the diversity of experience and skills that both

the volunteers and staff bring to the table contribute to the success of the program. She also stated, "The director and coordinator have an amazing ability to take what the community would like to do and make it happen."

Participant satisfaction was noted by four respondents as contributing to the success of their programs. Respondent (009) stated, "If everyone can go away feeling like they got something out of it, I think you've won." Another respondent (003) said, "The victim feels the process is reality-based. They feel heard. They can say things they want to say." Respondent (011) in her answer, stated that the program was successful if the participants "feel reconciled, that they are reconciled - feel the part, feel listened to during the process."

Community involvement was cited by three interviewees as an element contributing to the success of their program. Interviewee (001) captured the essence of the responses when he said, "The community is very enthusiastic. They believe the program is serving a purpose." He later stated, "...the program would not work as effectively without the community jumping on board." Another element that was identified by three respondents was having a good relationship with the criminal justice system. Interviewee (014) stated, "...we've developed a real good relationship with the criminal justice system and they trust us." Interviewee (001) said that the Crown Attorney's office and the police had been co-operative. "Both groups believe the program has merit."

Respondents also felt that their programs had a positive impact on the youth. This was particularly

important for one of the Aboriginal programs. The interviewee (004) stated that being dealt with by their own people was important for offenders. She noted that one client said, "Even though I was on the losing end, I respected the judgement that was handed out because of the people who determined the solution... They know my background, what I can do, what I can't do. They know my community and the conditions that I will be exposed to later on."

In talking about the success of their program two respondents stated that having positive outcomes including coming to an agreement and completion of agreements could contribute to the success of their program but neither respondent was sure that their program was successful at all. Other elements of successful programs that were identified by two respondents were having paid staff, having a good relationship with and support from the funder and educating the community. One respondent (011) said, "It is very important to communicate what you do - to go after speaking engagements to promote the program."

Finally, parental involvement, client participation, follow up, professional development, confidentiality, addressing the needs of victims, preparation, the holistic nature of the program, the fact that it was based on restorative justice values and the way the program was set up were all identified as elements of successful programs. With respect to client participation, one respondent (020) stated, "One of the things that we learn over and over again, that I learn over and over again, is that it really depends on the client. We can't make them do these things. They have to want to...The client can make the program successful." When speaking of the way the program was set

up, respondent (020) said, "...a lot of work went into setting up the program...It wasn't top down. They went to the community and asked people what they wanted. They went to the Elders and they gave them direction... They developed it from this and I think that makes it successful." Finally, one respondent (016) stated that preparation was key to the success of a program. He said, "You can't take any short cuts in the preparation and there's a lot of reasons why you can't. The participants need to have the chance to tell their stories particularly victims - several times. And as a facilitator, you need to know the stories from both perspectives... There needs as well to be a lot of information given to participants about the process - what to expect, what not to expect and what their role in it is."

According to directors/mediators of programs, all of the elements noted above contribute in varying degrees to the success of their restorative justice programs. The skill and ability of facilitators were seen as critical to the success of restorative justice processes. This was directly related to participant satisfaction. Community involvement and a positive impact on youth were also identified as contributing to successful restorative justice processes.

Next, participants were asked what they thought were the most positive aspects of the process that they participated in and what they thought were the most negative aspects. Their responses coincide with the responses of the directors/mediators. These are described below.

ii Positive aspects of the process

Participants identified a range of positive aspects of restorative processes. The most often cited response, by eight respondents, was that the program had a positive impact on the youth. Having a positive impact included things like: giving the youth a second chance, giving them the opportunity to accept responsibility for what they had done, having the opportunity to access additional services and having an awareness of the ripple effect of crime and how their actions had hurt other people. One respondent (005) said, "You're actually giving the kids a chance to fix it." Another (010) said, "I think the most positive aspect is that the offender becomes aware of the fact that their actions have had broader effects." Finally, one person (018) said, "For me, I think the most positive aspect of the process is the fact that not only do you talk about the negative features of what has happened but you also speak about the strength of the person... I think that's the most positive aspect - in that the person doesn't feel that they're all bad."

The second aspect that was seen as positive was that the program was having a positive impact on the community. One respondent (005) said, "The community are understanding that something is being done." Another respondent (012) said that the process gives participants hope. She stated that the process "empowers them to deal more productively with conflict in the future," which can have a ripple effect in the community.

Three respondents also stated that the most positive aspect of the process was that it was more effective than the criminal justice system illustrated by the following quotes. "They learn more from

this YJC than they ever would from the gentle slap on the wrist that they get from the criminal justice system.” (Respondent 010). “I think the best part of it was that they were confronted with it not like going to court... The kids spoke to them. The parents told them of how it hurt their kids...Maybe it made them think.” (Respondent 017). Finally, respondent (013) said, “It’s better than having the two people walk away and never talk to each other again or for the victim to say, “I hope they kill him (in jail).”

Other positive aspects of the process were: parental involvement, that the victim was able to speak about how the crime had affected them, and that it was good for parents. One respondent stated that he felt that the whole process was successful. Another respondent (005) identified that the participants really determine the success of the process when they said, “It’s positive all around, if the parents and youth are positive about it.”

iii Negative Aspects of the Process

There wasn’t one overarching response given for this question. A number of concerns were raised with respect to elements in restorative justice processes. Lack of parental support, lack of resources, poor processes, lack of sensitivity to victims needs and lack of involvement on the part of the offender were all criticisms identified by two respondents. Regarding lack of parental support, one respondent (005) said, “If there were any negative issues, it would be when we had a situation when a kid showed up on his own. We called and the parent came down. When you see lack of interest or concern on the parent’s part, that is negative.” With respect to negative

aspects regarding victims, one respondent (012) said, "When I guess, victims are re-victimized. For example, if they really, really want an apology and compensation and it's not forthcoming..." Finally, with respect to the process, one person (010) said that the process was poorly organized and not planned out. He noted that the location was very informal and felt that it didn't follow the mandate or the agenda as well as it should have.

Other negative aspects of processes that were identified were: fear of participating, that processes are emotionally draining, lack of sensitivity to the needs of youth with learning disabilities or mental health issues, and poor facilitation. One respondent (007) was very concerned with the lack of training and screening that takes place for facilitators. She said, "You're dealing with people who are very vulnerable. You need to understand group dynamics. My big concern with programs, and you're talking about using community volunteers who have two to three days of facilitation training, is that they're not equipped to deal with the issues that come out of forums. No one should leave this process in worse shape than they were in when they came."

Finally, in one case the respondent didn't have anything negative to say about the process and in three cases, respondents identified negative issues but at the same time stated things like, "It's a win-win. Both the community and offenders get something out of it so there really isn't a down side." or "My experience has been quite positive. If there were any negative issues..." Though some respondents had very good experiences, it seems clear that there are issues of concern with respect to a number of elements of restorative justice processes which need to be considered in

order to ensure that the processes and programs are successful and credible.

This section identified a number of factors related to negative aspects of restorative justice processes. In general, these relate to a failure to engage participants including offenders, victims and their supporters. The lack of support for offenders by their parents was especially singled out in this regard. Another important feature was poor processes which were related to lack of preparation and insufficient training for facilitators.

C. Repentance, Forgiveness and Reconciliation in Restorative Justice Processes

i Repentance

Accepting responsibility for one's actions is a hallmark of restorative justice. Consequently, most restorative justice programs require the accused or wrongdoer to accept responsibility for the harm that they have caused and to apologize and make amends to the victim and others affected by their actions.

When asked how important repentance or the expression of regret by an offender was to the program or process, some respondents (5) felt that repentance wasn't the right word or wasn't a word that they would use. Often, the word apology or remorse was used instead or alongside these other concepts. For example, one respondent (008) said, "I'm not sure I'd use quite those words. I can't think of an agreement that has not contained at the very least an apology of some kind." Another (020) said, "Well, I guess the word repentance - makes me a bit uncomfortable

just because it has such connotations with a Christian religion type thing, but that's just me. Is apology ok?" Interestingly both the secular (Braithwaite, 1989) and spiritual literature on restorative justice (Hadley, 2001) use the word repentance but it obviously carries with it religious connotations that were distracting for some respondents, even when another term was used alongside it. In order to avoid a situation like this in future research, it would be important to field test the questions in advance in order to ensure that the questions are worded appropriately and capture what takes place in the practise of restorative justice.

Almost all of the respondents (17 out of 20) felt that repentance or the expression of regret was important in the process or program that they were involved in. This was expressed in varying degrees of importance by these 17 respondents. For example, six stated that it was "essential" and in fact determined whether or not the process took place, as illustrated in the following quote from respondent (011), "Remorse is really important because we will not proceed without remorse or the expression of regret." Another (003) said, "The concept of repentance/regret or apology is a cornerstone. In some cases, that's all that's required." Four respondents felt that it was "critical" to the process. One respondent (005) said, "It is a critical element. You get a sense of how sincere a person is." Four respondents felt that it was "very important" to the process or the program and one said that it was "important." Two respondents felt that it was "very important though not absolutely critical" to the success of the program and two felt that it was important if it was appropriate or what the victim wanted. For example, one person (019) said, "Well, if that is what the victim is looking for, then it's extremely important. It might be less important for a victim

that's not looking for anything but being able to tell the offender how the incident affected them..."

The other person (007) said, "I think what's critical is that an offender or accused is willing to be accountable for their contribution to the problem. If that's (repentance) appropriate, then that's something you want to strive for...I really like it when it happens."

Finally, one respondent (020) felt that repentance by the offender really wasn't important to the program that she is involved in. It is an urban, offender-based program and victims do not often participate. Her response was very insightful. She said, "It's not that it's not important. It's not one of those things at the top of the list and I'm saying these things from a social justice point of view. Oftentimes we're seeing people who are stealing because they need to. How remorseful can you be if the way you're getting your necessities met is to reach the point where you are stealing? They often feel bad enough."

Not surprisingly, in several cases, the importance of expressing remorse was directly tied to the needs of victims or those affected by the crime. One respondent (013) said, "Often that's what the victim wants. That's how they get recognition for the hurt. If it doesn't happen, I think the re-victimization happens. You can't wring it out of them but the victim has to sit there and nothing happens and 'all my efforts are in vain'." Another (004) said, "It is a critical element - to the victim they have harmed. But more importantly, it is an open acknowledgement to the people they have affected."

A few respondents connected the success of the process or program to whether or not the offender expressed remorse. One respondent (006) said, "In most cases, there is remorse. If there's not, I don't think the program would work very well." Another (018) said, "I think if the person wasn't remorseful, it would be very difficult for the community to accept the person back into their midst."

It was interesting to note that several interviewees felt that there is a process that offenders go through to get to the place of repentance or the expression of regret. One respondent (018) said, "It's important. It's very important but I'll tell you something else, a person doesn't have to come in at the beginning and express remorse. There are persons who are deniers and minimizers and it takes time and we work with them to help them....That's one of my beliefs - like people want people to take responsibility for their actions right away. But people are in denial and it takes some time for them to come around - for them to come clean, eh." Another person (009) said, regarding an apology, "Of course, that's just the beginning. Just being sorry isn't enough. It's one element among many elements... You can feel the difference when someone turns a corner from poor-pity me." He related the process to the story of the prodigal son in the Bible. In the story there is a line that says, "Then he came to himself." The notion that offenders have to come to a place where they accept responsibility for their part in the harm and be willing to try to change was really important. Finally, respondent (004) connected the expression of remorse to a spiritual dimension when she said, "To some extent, it is a form of repentance not only to the lives here on earth, but also to the spirit world."

It is clear that where victims and community members are involved in restorative justice processes, the expression of regret by an offender is really important. As previously noted, many programs represented in this research will not proceed with a restorative process if the young person does not accept responsibility for their actions and show at least some degree of remorse for what took place and how others were affected by it. It was interesting to note that not all directors/mediators of programs stated that acceptance of responsibility by the youth was a requirement for participation in a restorative justice process. The literature on restorative justice identifies the acceptance of responsibility by perpetrators as a minimum requirement for participation in a restorative justice initiative (Nova Scotia Department of Justice, 1998; Sharpe, 1998; Law Commission of Canada, 1999). It could be that directors/mediators took this aspect of the criteria for granted and assumed it was an obvious feature of all processes that didn't require explanation. On the other hand, forgiveness by the victim was not as important to the processes or programs described here.

ii Forgiveness

When asked how important forgiveness by the victim was in the process or the program that the respondents were involved in, there were five respondents that said, "I'm not sure the word is forgiveness." One respondent (003) said, "Forgiveness is translated as acceptance of the victim of the terms of the agreement." Other respondents also noted that forgiveness came at the point where the victim accepted the apology. Again, the concept of forgiveness is derived from the philosophy and writings on restorative justice but in practise, simpler, less "loaded" terms like

acceptance may be more appropriate for future research.

There were an array of responses to the question of the importance of forgiveness. The two most common responses were: 1) that it was "important" to the process/program and, 2) that it was "not important to the program but was dependent on the needs of the parties". Five respondents said that it was important and five said that it wasn't.

Examples of positive responses included the following. One respondent (010) said, "When I walk away from the forum, I walk away with a less jaded point of view. In some cases, I feel that I've had a one-on-one encounter with an offender... The person apologizes. That person is sincere and is apologizing not for affecting my corporation but for affecting me... Ya, that's important. If I didn't have that kind of outlet, I'd be more cynical than I am." Another respondent said (017), "If you go to court and something is decided, you don't have a chance to accept it (the apology). But this is a whole different ball game here..." For these two respondents, forgiveness was clearly an important part of the process.

With respect to responses where interviewees felt that the importance of forgiveness was dependent on the needs of the participants, one respondent (019) said, "I would say...if it's a need of the party then it's important. So, it's not about how important it is to us but about what's important to the parties. We don't set up our mediations with the goal of having forgiveness take place because what you're doing is prescribing a behaviour or an expected outcome. That's not

our right to determine or expect.” Another respondent also shared this view. He (009) said, “To me, the forgiveness is the fruit of the process and it may or may not be eaten. It’s up to the victim, it’s up to the offender, it’s up to the supporters to find forgiveness. If the forgiveness happens, it has to be granted. When the victim says, “I forgive you,” to the offender - when the mother says to the young offender, “I forgive you,” - when that happens, it’s powerful. It’s pure grace. It can’t be legislated. It can only be granted. It has to happen without request/being required.”

Three respondents stated that forgiveness was “important but not crucial” to the success of their program and again, it was dependent on the needs of the parties which is illustrated by the following quote (Respondent 015), “Forgiveness is nice when it happens. I don’t consider it a failure if that’s not obvious to me. It’s really up to the victim whether it’s a success - whether they’ve gotten out of it what they want to get out of it and forgiveness may not even be on their list.” A further three respondents felt that forgiveness was “not important” to their program at all. This response was more common in youth justice committee processes where victims generally did not participate in the process. One respondent (001) said, “Forgiveness is not a factor for the program. A lot of charges are from stores and corporate mandated stores are not involved in this program.

Two respondents noted that forgiveness is “really important” for the participants instead of the program. In her story, one respondent (012) said, “I think it’s really important not so much for the program but for people to be able to move on. If someone can’t forgive, one of the difficulties is, I think, it becomes difficult for them to use the tools (to resolve conflict). I’m not a sociologist...I

think you get jaded and you're not able to learn. Hangin' on, not forgiving somebody, I think impedes your ability to move ahead, to move on." That being said, the respondent noted that she hasn't had forgiveness happen in a lot of her mediations. She states, "There are so many things that you are trying to accomplish...It's kind of serendipitous. It if happens, it's lovely, it's wonderful... It rarely happens. It tends to be so much hard work that it tends to, if it happens, to happen on its own."

In the instance where the respondent felt that forgiveness was "critical" to the program, her rationale was that there has to be balance between repentance by the offender and forgiveness by the victim. She (Respondent 004) also said, "Here is our small community, the two parties are apt to run into each other. If they haven't gone through this process, they will try to avoid one another, give dirty looks...Unless there is some form of forgiveness, at least a start, you'll have that kind of attitude." Finally, one respondent (014) said, "Well, it's not that important...Like the victim doesn't have to say in the circle, 'I forgive you.' But it is the basis for this, that through forgiveness comes renewed relationships - but I don't think forgiveness happens all the time."

What was very obvious in the majority of the responses was that forgiveness is not something that should be forced on participants in restorative justice programs. Instead, if the process works properly, it should occur naturally. As one respondent (009) said, "Forgiveness is a free-will act of the soul." In addition, it was clear that forgiveness isn't as important for the program as it is for the participants as explained by respondent (009), "Forgiveness blesses both the forgiver and the

one forgiven. It blesses the forgiver because it sets them free from the bondage of hatred and revenge. It blesses the forgiven so they can forgive themselves from the bondage of what they're behaviour did." It was also clear that forgiveness is difficult and often involves a process. A number of respondents noted that it takes time, as illustrated by the following quotes. "Forgiveness is a really, really difficult thing and if it's easy, then it wasn't a big deal...Forgiveness to me is an agonizing process to go through, especially if it's a serious situation" (Respondent 007). "I think often they need to think before they can forgive" (Respondent 011). Respondent (018) said, "I think the forgiveness may come later. So, it's part of the process. I think it's the part at the very end of the process. It may happen during the gathering but, it may happen after the gathering...farther along." These findings are consistent with the literature in this area (Marshall, 2001; Gorringer, 1996; and Zehr, 1990).

Three respondents noted a connection between forgiveness and spiritual things. One respondent (003) said, "I don't know that that's a question we've addressed very much... I'm glad you raised the question. It would be good for us to talk about it. Most of the people on our committee come from a more secular perspective. Most of them do not come to the work from a faith perspective." Another person (012) said, regarding the processes that she has been involved in, forgiveness "tends to be gravy, as opposed to a professor or a Christian counsellor who would make forgiveness and holy attributes more important." Finally, respondent (009) felt that forgiveness has both a human and spiritual dimension. He stated, "Forgiveness is a free-will act of the soul. The interesting thing is that as humans, this is the heart of what makes us spiritual beings. The

experience of being forgiven is that God, a transcendent, personal being, has declared me guilty but forgiven and the cost of that was paid for me. I wasn't able to pay for it... I can't undo anything I do... There's a persistence about past behaviour. There's a groan inside, reminding us of the little things. But the big things, for example, the stuff perpetuated on the Aboriginals, the real stuff, our inhumanity to one another, how does that get forgiven? I think it has to have a human side to it so we have conferencing. But also, at the spiritual level, it speaks to why and how we were made. We were created in the image of God. We were designed to live in balance and harmony with one another. When we do not follow God's plan, we sometimes find ourselves needing forgiveness." As these three respondents note, forgiveness is inherently linked to a spiritual dimension. For people who come to the process from a faith perspective, the link between successful restorative justice processes and a spiritual dimension is much more overt.

iii Reconciliation

What is reconciliation? As with forgiveness, respondents provided a variety of definitions of this concept. For one respondent (003), reconciliation meant: "Each sees the other as a person as opposed to something more abstract and anonymous." For another person (019), reconciliation was about an opportunity for growth - for closure, healing and those sorts of things. What does reconciliation look like? From a victim representative's point of view, reconciliation looks like this: The respondent (010) said, "I have said to a young person, 'Certain things are going to happen to you. They're going to happen in here (the respondent pointed to his head) and in here (then he pointed to his heart) but don't let them stay there.'" He said, "Ok. Once you've completed all this

(fulfilling the terms of the agreement), put it behind you. Don't carry this into your future with you."

When asked if the process or program that they were involved in encouraged reconciliation, seventeen respondents said, "Yes." two said, "If appropriate." and one said, "No." When asked how this was done, nine of the seventeen respondents stated that the process - the circle, the mediation, the tribunal - promoted reconciliation. One respondent (010) said, "The YJC makes it more personal, less clinical, less like the criminal justice system. For the victim and the offender - it may sound cliché, but it's healing." Another person (003) said, "The process of coming up with an agreement produces reconciliation. Whether you think of the process as repentance/forgiveness or as an exchange of understanding, I think it promotes reconciliation." Another respondent (015) said that the structure - the way it talks about respecting each other and the format for how circles are conducted promotes reconciliation. Finally, one respondent talked about how the process moves the participants to a different place. She (011) stated, "It moves from, 'You're the victim, I'm the offender.' to a conflict between two people. Sometimes through the dialogue, this is what happens - the offender becomes the victim...They're at a new ground, a new understanding. I'm sure this is how we bring about reconciliation."

Preparation was the second most common way in which reconciliation was promoted. Four respondents noted that it was important to prepare participants for the process. One respondent (016) said, "There may be a conference that culminates but without the preparation, there's nothing to culminate...we guide them on the journey toward that (reconciliation). So we help them identify

their issues. We help them identify their positions. We help them to see the other side in general terms..." Another respondent (012) stated that she tried to show clients the benefits of reconciliation in terms of practical things like, "You'll be able to sleep."

Helping people come together, the use of symbols and helping the offender understand the impact of their actions were each mentioned by three respondents as elements that also help promote reconciliation. Where respondents talked about the use of symbols, for the most part it involved having the offender apologize. But one respondent (018) said, "We've done ritualistic things. We've had a victim and offender light a candle together." Finally, respondents noted that reconciliation was promoted when the needs of the parties were met and when offenders were sincere in their apology to the victim.

When asked why reconciliation was important, respondents gave a variety of reasons. Of the seven responses given, there were five reasons given. The most common response by three respondents, was that the goal of the process was to restore balance to the community or bring healing. One respondent (010) said, "I think it's so that everybody can go on with their lives. For instance, if I run into this person in the mall, I can say, "Hi." with a smile on my face and they say, "Hi." back with a smile on their face...I have to see that person every day. I can't spend all of my days looking at this person with distrust and anger. It's not a good way to live...They don't have to change who they are because they see me as the officer but as a human and I don't have to change who I am because I see them as a human and not only as an offender." Another person

(012) said that promoting reconciliation was important “because people get locked into anger - if you get people carrying around unresolved anger - disillusionment and hurt, I don’t think that’s a good community thing. I think it breeds more conflict. I tend to think if people have been wronged then they are going to govern themselves accordingly; they will be less trusting. Anybody who carries around baggage - unresolved issues - I don’t think it’s a healthy thing.” Other reasons that were given for promoting reconciliation were: to be a caring community; to promote a positive view of youth and the criminal justice system; and to help develop understanding between the parties.

Where the respondents stated that reconciliation was promoted if appropriate and where one person said that it was not a goal of the program at all, their responses focussed on the fact that reconciliation is not something that one can make happen. One respondent (007) said that one of the goals of her program was to “restore the relationship to whatever degree that is possible.” At the same time, she noted that, “There is real power when someone is genuine and apologizes for what they’ve done. There is zero power when someone is told to apologize. It’s like a parent telling their kid to apologize when they’ve done something wrong, the kid says, “I’m sorry.” but it doesn’t mean anything.” So, reconciliation can’t be forced. Another person (009) said, “The reconciliation between the offender and the victim can be a product of the process but it’s not the goal. It’s like grace. It can’t be legislated. It’s often a gift. It is given. It can only come if you give it.”

The discussion above regarding repentance, forgiveness and reconciliation set the stage for

the following section on spirituality and restorative justice processes. The findings suggest that while forgiveness and reconciliation cannot be forced or mandated, they are important elements of successful restorative justice programs. In fact, respondents noted that in the absence of a sincere expression of regret, forgiveness, reconciliation and closure were unlikely. This has important implications for the role of spirituality in successful restorative justice processes, whether these are implicit or explicit.

D. Spirituality and Restorative Justice Processes

Words like grace, forgiveness, reconciliation and remorse are connected to values and beliefs that are often rooted in religious or spiritual traditions. They assume the existence of a relationship between the physical and spiritual realm in the context of an individual's relationship to a deity or superior being. At the same time, the actions of giving grace and forgiveness and saying, "I'm sorry. I was wrong." can themselves be very spiritual and 'magical,' as some of the respondents noted. This section considers responses to questions that focussed on whether or not this element exists in restorative justice programs. Respondents were asked if the process that they participated in had overtly spiritual elements or overtones or if their program had a spiritual component to it. They were also asked how important a spiritual dimension was to the process they were involved in and about their spiritual beliefs. As an introduction, the definitions of spirituality given by respondents are considered.

Respondents definitions of spirituality were quite varied. Of the fourteen respondents that provided

a definition of spirituality, the most common response (given by five respondents) was that spirituality is related to religion, a belief system, a belief in God. One respondent (001) said, "It has a religious connotation. Are they answering to their God? - a matter of right and wrong." Three respondents talked about spirituality in relation to values and finding meaning and connection in the world - understanding how everything fits together - the "big picture" as illustrated by this quote from respondent (007), "For some people it means organized religion. It means who I am as a person, what I believe and where I fit in my family, my community and in the world." Another respondent said, "Well, I know that the way that I want to think about spirituality is larger than the dominant idea of spirituality which is tied to religion. It can mean so much, much more, but what that much, much more is, I'm not quite sure yet (Respondent 020)."

Three respondents also said that spirituality could be defined as a power outside themselves, a higher power. One respondent (010) said, "It has absolutely nothing to do with the general concept of God, the Bible or church. Maybe it's better to give an example. I love storms. A lot of people don't like storms. I love the power that they have. It's an awesome power that I can't control and I love that..." Other definitions of spirituality included what people do to find support and hope, the idea of bettering oneself, an inner sense of empowerment and one respondent said that spirituality was based on her native heritage which is based on the teachings of the Seven Grandfathers.

The results revealed that essentially, spirituality meant different things to different people. For some, spirituality was identified in relation to religion. For others it meant emotions and values.

These varied definitions influenced the way respondents saw the role of spirituality in restorative justice processes.

i Existence of spiritual elements or a spiritual dimension

When asked if there were overtly spiritual elements or if there was a spiritual dimension to the process or program that they were involved in, the most common answer (from 6 of the 20 participants) was that there were no overtly spiritual elements to the program or process but there was a spiritual component that was implicit. Respondents talked about the process itself being spiritual in the way it promoted healing, forgiveness, remorse and reintegration. Sharing feelings and developing deeper understandings were also identified as spiritual components of processes. These aspects were more subtle. As one respondent (007) said, "It is experiential." One really can't understand it until they've been part of it.

Overall, when people spoke of an implicit spiritual dimension, they were speaking of how people's hearts or spirits were affected by the process. One respondent (002) said, "The elements are not overt. Rather they are implicit. I believe that there is a spiritual aspect to the process. The reintegration and the healing are the parts of the process that are spiritual in nature...The internal aspect of it is the spiritual element. The things that are most private to you are what the most spiritual element is. There are a lot of similarities between the model, the grieving process, and the twelve step process." Another respondent (011) said, "Yes there is...I'm trying to find words to add to that. I guess because people are able to look beyond the physical act of the crime...When

we've gone through the physical act of the crime, when we've gone through the emotional act of the crime, then you get into the spiritual dimension. It's hard to talk about this. But when I talk to mediators they refer to it as magic. People come in so hard and tense and then leave so soft. We don't know what happens. We just say it's magic." The same respondent said, "I think that this whole spiritual dimension, they may not say that that's what it is, but it helps them to move on with their life... They might not be able to name it.. I think it promotes forgiveness. I think it brings about a unity of humanity...People are laughing and they are happier. The room is lighter. People have moved through a brick wall."

Five respondents said there were no spiritual elements - there was no spiritual dimension to the processes that they were involved in. Interestingly, in three of the five cases, the respondents answers were very short. They simply said, "No - not at all." Two respondents stated that if the clients to the program wanted a religious or cultural dimension incorporated into the process, it was flexible and could accommodate the client's needs but to date, there have not been any such requests. In all of these cases, the respondents referred to spirituality in the context of organized religion.

While there were a number of respondents that said there was no spiritual dimension to the process that they were involved in, whether implicit or explicit, there were a number of respondents (five) who stated that there were overt spiritual elements in the process/program that they were involved in that included prayers, ceremonies and symbols that connected them to a faith or spiritual

tradition. Four of the five respondents had participated in Aboriginal justice programs. The overt spiritual elements in these programs were grounded in spiritual traditions that recognized the importance of relationships between the participants and between individuals and the Creator. One respondent (018) described the process in this way, "We, um, always ask the person for who the gathering is being held - usually the offender is asked what kind of ceremony they would like. There's always a spiritual ceremony at the beginning. And we also have a spiritual closing and then the circle is conducted in a very ritualistic way...And that may be a Christian ceremony, it may be a traditional ceremony, whatever the person wants...I think this is a spiritual part of it. When people speak in the circle, we go in a clockwise manner which is the Ojibway tradition and the person who's speaking holds something in their hand. Often it's a eagle feather and that's the signal that this is the only person who can speak right now. So, that's very respectful..." The people involved in these programs were "living" the values and beliefs that are part of their native heritage in which culture and spirituality are often synonymous. The ceremonies and prayers helped to mark these events as significant and prepared the way for reconciliation and healing to take place by helping people participate "with a good mind."

In the process that was not Aboriginal, the respondent (009) stated that churches were used as meeting locations and that hosts or greeters involved in the processes were from faith communities. His rationale for this was that spirituality is usually understood in religious ways and that churches are meant to be "places of personal value, of security, of sanctity of the individual, a source of grace, love, of reconciliation." He talked about a practise in the Old Testament where the temple

represented a safe place. He said that when someone had done wrong they could run to the temple and grab hold of the horns of the altar as a place of safety. This respondent feels that churches can still be places of safety today.

For three respondents, the process had implicit spiritual elements and sometimes an overt spiritual component. In each case, the use of overt spiritual elements, for example, prayers, was dependent on the participants and the context of the process. One respondent (013) said, "The act of forgiveness, apologizing - they're all spiritual events that happen during a mediation." She also noted that she has used stories with spiritual elements in them when doing mediations with people of faith. Another respondent (007) stated that she has done mediations in a church context where she has introduced the session with prayer. She said, "I say that we're going to start with a prayer and sometimes people are really surprised." At the same time, the use of spiritual elements was very dependent on the context. The respondent also stated that she would be very cautious about doing it in a court related process because she didn't want to bring something to the process that could make things worse. One respondent (015) stated that there were no overt spiritual overtones to the program that she was involved in but sometimes, the spiritual dimension was implicit. In this context, spirituality was connected to the expression of emotion.

Finally one respondent stated that the program that she was involved in had both implicit and explicit spiritual elements in it. She (Respondent 020) stated, "A really easy thing to point out is the smudging and the circle that's involved. The community meeting - they try to keep the circle.

It's not like a sentencing circle but they try to keep to the theme. These are easy things to point to. The other things are harder. They're subtle, a little bit illusive, like you can't pin it down...Depending on whether you want to use the words culture or spirituality, they could be used synonymously...'"living in a good way' can be seen as spiritual. So you know, daily living, although it seems very, I want to say ordinary, but that doesn't sound right...can be spiritual." So cultural values like respect and kindness are important "...so everything we do involves showing respect and being kind to the victim, to the offender, to everyone involved."

In a number of cases, respondents felt that they could not nor should not impose a spiritual dimension on the process as illustrated by the following, "I'm aware that historically, there may have been (spiritual elements) but I believe that's a bit of an imposition...by layering it in a spiritual way...I think you can't impose that... To have a spiritual component would be my agenda and wouldn't be good for the victim (Respondent 015)."

In summary, one quarter of the respondents said that there were no overt or implicit spiritual elements in their programs. For the remaining respondents, the role of spirituality varied in degree ranging from accommodating the needs of participants, to reflecting their deeply held values. For example, five respondents were involved in programs with overt spiritual elements, six had implicit spiritual elements and three had implicit and sometimes overt elements. For one respondent, however, the program reflected both implicit and explicit spiritual elements that were embedded in her lifestyle and beliefs. The results show that spirituality is an important element (whether

explicit or implicit) of restorative justice processes for three quarters of the respondents. This has important implications for those offering both secular and non-secular restorative justice programs.

ii Impact of spiritual component

Those respondents that identified a spiritual component to the program or process that they were involved in, whether implicit or overt, were also asked what impact this dimension had on those involved in the process. Two of the directors/mediators of programs said that the process, which they felt was spiritual in and of itself, made them feel good. They felt as though they were helping people and making a difference. Two respondents said that the spiritual dimension helped bring them back to their roots. In both cases, the respondents were involved in Aboriginal justice programs. One respondent (014) said, "That's (being the spiritual dimension) the basis for it, so it grounds us. Like the process is rooted in our traditional beliefs, I guess, it keeps us there." One respondent said that having the spiritual dimension contributes to the completeness of the process which he felt was important.

Finally, one respondent (020) said that she was not as concerned with the impact of the process on the staff as much as she was concerned with how the program was impacting the clients of the program. She said that for some of her clients, the first time they were treated with respect and kindness was during the council meeting.

With respect to the impact on the participants in restorative processes, both participants and

directors/mediators identified a number of benefits. Three respondents noted that the spiritual dimension promoted closure. Three people also said that it promoted a deeper understanding between participants. Other answers that were provided were that having a spiritual dimension: created a calming effect; gave people courage to speak and share their feelings, provided an opportunity for participants to be connected to needed resources, and created the possibility for a “spiritual epiphany” to take place where participants found hope and satisfaction in realizing they could come up with a resolution to their problem.

ii Importance of a spiritual dimension

The nine respondents who were program participants (as opposed to being directors/mediators) were asked, “How important was the existence of a spiritual dimension in the restorative justice process that you were involved in?” The majority (7 of 9 respondents) said, it was important or very important. Their descriptions of the spiritual dimension however, varied considerably. Some talked about feelings and emotions as being very spiritual while others talked about values and beliefs. One respondent talked about the spiritual dimension being intangible and experiential.

The following quotes reflect the types of responses given by the four interviewees that felt that the having a spiritual dimension was “important” to the process that they were involved in. Three of the four respondents connected spirituality to values and beliefs. Regarding the importance of a spiritual dimension, respondent (005) said, “Personally, it’s an important part of it. It makes it easier for a person, for example, if they have an understanding of the Ten Commandments, it is

easier for them to understand what they've done wrong. We had a kid who has been in ten foster homes, who has been on the street...If you get a kid who is from a home that is not as caring, that does not have a strong value system, you wonder how effective the process is going to be." Another respondent (010) said, "Knowing the difference between right and wrong is more important than getting caught. Knowing that stealing is illegal and part of the Criminal Code of Canada is not nearly as important as knowing that stealing is wrong. It's important that the offender have some kind of spiritual grounding because without some sort of spiritual grounding, the fact that stealing is wrong is moot." The fourth respondent (012) connected spirituality to feelings. She felt that the spiritual dimension was important and that it was important for mediators to recognize that a spiritual dimension exists because the "baggage that people carry around is very damaging to the spirit." She stated that the sense of being outraged and wronged is a spiritual problem and noted that most people aren't even aware of their spiritual needs.

For the two respondents that felt that a spiritual dimension was "very important" to the process that they participated in, both identified that spirituality was connected to feelings, thoughts and the process. Respondent (013) said, "...your feelings are spiritual. Life isn't just physical, that's the least important part. The whole interaction is spiritual. The feelings are spiritual. They come from the inside. The issue itself, why it happened is spiritual. It happened for a reason. The feelings resulted from the incident and they put them into action. So the whole thing is spiritual." The other respondent (018) said the spiritual dimension was very important because it, "helps people to try to do things in a good way. It fosters respect"...and..."somehow imparts the courage that people

need to speak from their hearts.”

Two respondents felt that a spiritual dimension was “not important” to the process at all. One of these interviewees connected spirituality to religion in the sense of having explicit religious symbols in the process and stated that it didn’t play a part. Finally, one respondent (007) said that having a spiritual dimension was “important but not absolutely necessary” to the process. She stated, “I think it’s an undercurrent that runs right through...It’s an experiential thing and the whole process is experiential...I tell people, ‘It’s really hard to explain but there are powerful dynamics in these groups. It’s not always articulated but it doesn’t make it any less present.’ It’s like going to church. You don’t have to walk in and say, ‘I’m here because I believe in God.’ It defines who we are and why we do things but it doesn’t have to be said out loud.”

iii Belief in a higher power

Next, the participants were asked, “If spirituality is defined as belief in a higher power, do you consider yourself to be a spiritual person?” In all nine (participant) cases, the respondents answered, “Yes.” Four of the nine respondents indicated that their background was Christian - respondents were at varying degrees of practising their faith. Another respondent was Aboriginal. Respondent (007) said, “Yes. Somebody had to kick start this whole schmoz...It’s a recognition that it would be supremely arrogant for anyone to stand there and say, ‘I know it all.’ There are mysteries that we haven’t gotten to the bottom of...” Another respondent (010) said, “That’s a hard one for me to answer. I’m a member of AA. I’ve been sober for 25 years. I’m an athiest.

It's a necessity for me to believe in a higher power but being able to define that higher power is an impossibility for me."

Since all nine of the respondents indicated a belief in a higher power, it was impossible to examine the impact of belief in a higher power on participants experiences in restorative justice processes. However, in the course of the interviews, for some of the respondents, the spiritual aspect of their lives informed their day to day life. When the opportunity arose during restorative justice processes, they were more willing to engage around spiritual issues.

CHAPTER V

DISCUSSION AND CONCLUSIONS

V. DISCUSSION AND CONCLUSIONS

The original intent of this research was to explore the question, “What is the role, if any, of spirituality in restorative justice programs?” Initially, it was proposed that Aboriginal justice programs and victim-offender mediation or victim-offender reconciliation programs would have a spiritual component to them because their roots were in a faith or spiritual tradition. It was also assumed that family group conferencing models and youth justice committees would be secular since the catalysts for these processes in Canada, have for the most part, been the government and criminal justice personnel (ie. the Royal Canadian Mounted Police).

The results of this research indicate that simple distinctions between programs that contain a spiritual dimension and those that do not cannot be easily made. The question of spirituality is more complex and nuanced. The respondents defined spirituality in a number of different ways. For some, it meant religion and organized religious practises. For others it was connected to values and emotions and referred to relationships with other people.

This distinction between overt and implicit spirituality was also evident in the ways in which respondents talked about the existence of a spiritual dimension. Some respondents stated that there were overt spiritual elements in the processes that they were involved in. These included prayers, ceremonies and the involvement of faith communities. The implicit spiritual elements were less tangible and were often connected to the expression of emotions and to notions of understanding, healing and reintegration.

It is significant that for three quarters of the respondents, the existence of a spiritual dimension, whether implicit, explicit or both, in restorative justice programs was important. These results indicate that there is a role for spirituality in restorative justice programs and processes. The nature of this role was described in a variety of ways. Generally, respondents referred to the space that was created for participants to share their thoughts and feelings and obtain closure regarding the incident. Respondents indicated repeatedly that active, genuine participation was required for those involved if they were to reach this level of "connection". For many of the respondents, satisfaction was based on whether or not the participants were able to get to a level where the interaction between them was meaningful (sincere and heartfelt). In many cases, this was dependent on the way the process unfolded which in turn reflected the skill and preparedness of the facilitator.

In a number of the programs, spirituality was evidenced by the honest, heartfelt sharing and accountability that takes place during restorative justice processes. There was a recognition that people are spiritual beings who are deeply affected by crime and conflict. Notions of moral responsibility, forgiveness, reconciliation, healing, all spoke to the way in which restorative justice goes beyond dealing with the physical act of a crime, to considering how people are affected emotionally, socially, physically and spiritually when crime happens. The programs do not have to advertise the spiritual nature of the process because the elements speak for themselves.

The finding that a role exists for spirituality in restorative justice programs has important implications for the current criminal justice system. There is a tension between restorative justice and the

current retributive justice system which is secular and seeks to be non-discriminatory in its application. Where this tension presents itself is in the arena of financial support for restorative justice programs. Many restorative justice programs receive support from the government, whether provincial or federal. Where programs are connected to spirituality - and in particular, where spirituality is connected with ideas associated with overt religious beliefs, there is uneasiness and concern. This tension was evident in responses from one interviewee (011) who said, "I inherited this program with this word (reconciliation). I believe the words reconciliation, forgiveness, remorse, change...are important. People don't like the spiritual connotation to the program - our funders. We have had difficulty with our funders because we emphasize reconciliation. They want us to change our program to be less spiritual." Another respondent (001) who had stated that there was no spiritual dimension to his program noted that spirituality probably wouldn't be well supported by the government. He stated that if a spiritual dimension was adopted it would be a tall order to fill - the program would have to clearly define spirituality.

It is interesting but not surprising to find that all of the Aboriginal justice programs had an overt spiritual dimension and that all of them received government support. The federal government has for some time recognized that the current justice system is not meeting the needs of Aboriginal peoples in Canada. The over representation of native people in the prison system is evidence of this fact. The move toward native self-determination has long been a demand of Aboriginal peoples in Canada and this has included a desire to return to their native heritage and traditional ways of responding to crime and conflict. In response, the Canadian government is supporting the

development of Aboriginal justice programs which are rooted in their spiritual and cultural traditions.

There is also increasing support for other restorative justice programs in the mainstream criminal justice system. However, if the reasons for this support focus on reducing costs and relieving pressure on the court system, there is a risk that restorative justice programs may lose their emphasis on healing and be co-opted (Department of Justice, 2000b). It is easy to fall into the trap of doing things in a certain way because that's been the accepted way for so long. Sharpe (1998) encourages advocates of restorative justice to continually reflect on the hallmarks and values of restorative justice in order to avoid falling back into thinking about and responding to justice issues in a retributive way. She also states that programs that hold to the values of restorative justice will last longer and will be stronger than those that focus on the more practical benefits mentioned above.

The focus on healing in restorative justice also has implications for its implementation by the current criminal justice system. Many of the restorative justice programs that are supported by the government, particularly family group conferences and youth justice committees, have criteria that limit eligibility for participation in these processes to first, or sometimes second time, non-violent offenders. If as previously mentioned, the experience of restorative justice appears to be more meaningful for all of the parties when it involves a serious offence and where the victim is deeply impacted by the incident (Nova Scotia Department of Justice, 1998), it is important to consider

implementing more restorative justice initiatives that allow serious offences to be considered, keeping in mind the need for safeguards as mentioned earlier. The potential benefits of providing opportunities for people to move beyond the impact of a crime toward healing should inform discussions of the types of offences to be considered when restorative justice programs are developed. The goal should be provide a space for people to be restored and what this means is that it provides an opportunity for people to be free, at least to some degree, from the long term negative effects of the crime on their lives.

Finally, most evaluations that are being done to assess the effectiveness of restorative justice programs use outcome measures such as reducing recidivism and reducing costs. If restorative justice is primarily focussed on healing, success of programs should be measured on the basis of the degree to which healing takes place. Consequently, further evaluation research that is conducted should consider how restorative justice fulfills its goal of restoring or transforming people and relationships affected by crime.

This thesis provided an initial examination of the question of whether or not there is a role for spirituality in restorative justice programs. Considering the lack of research in this area, more work should be done to explore the meaning and role of spirituality in restorative justice processes. In addition, future research should be directed toward those factors that make restorative justice processes “magic.”

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APPENDICES

APPENDIX 1

Participant Interview Guide

1. What type of restorative justice program did you participate in?
2. What was your role in this restorative justice program?
3. Why did you decide to become involved in this program?
4. Who were the participants in the restorative justice process that you were involved in?
5. What were the goals of the restorative justice program?
6. Briefly describe the process that took place during the restorative justice program that you participated in. (eg. sentencing circle).
7. In your opinion, what was the most positive aspect of the process?
8. In your opinion, what was the most negative aspect of the process?
9. Did the process have overtly spiritual overtones or elements?
 - a) If so, what were they?
 - b) What impact did these elements have on the process?
10. If spirituality is defined as belief in a higher power, do you consider yourself to be a spiritual person?
11. How important was repentance or the expression of regret by an offender, to the success of the restorative justice process that you were involved in?
12. How important was forgiveness as a component of the program? Explain.
13. Did the program encourage reconciliation between the victim and the offender? If so, why?
14. How important is the existence of a spiritual dimension in a restorative justice program that you were involved in?
15. In your opinion, where does the concept of restorative justice come from?

Director/Mediator Interview Guide

1. What type of restorative justice do you provide?
2. What is your role in this restorative justice program?
3. How long has the program been running?
4. How are people referred to your program?
5. What are the criteria for determining if a case will be referred to your program?
6. Who are the typical participants in your restorative justice program?
7. What are the goals of your restorative justice program?
8. Briefly describe the process that takes place during your restorative justice program.
9. What makes your restorative justice program successful?
10. How important is repentance, or the expression of regret by an offender, to your restorative justice program?
11. How important is forgiveness by the victim to your restorative justice program?
12. Does your program encourage reconciliation between the victim and the offender?
 - a) If so, how?
13. Is there a spiritual dimension in your restorative justice program?
 - a) Is so, what does this involve?
 - b) What impact does it have on those providing the program to the participants?
 - c) What impact does it have on the participants in the program?