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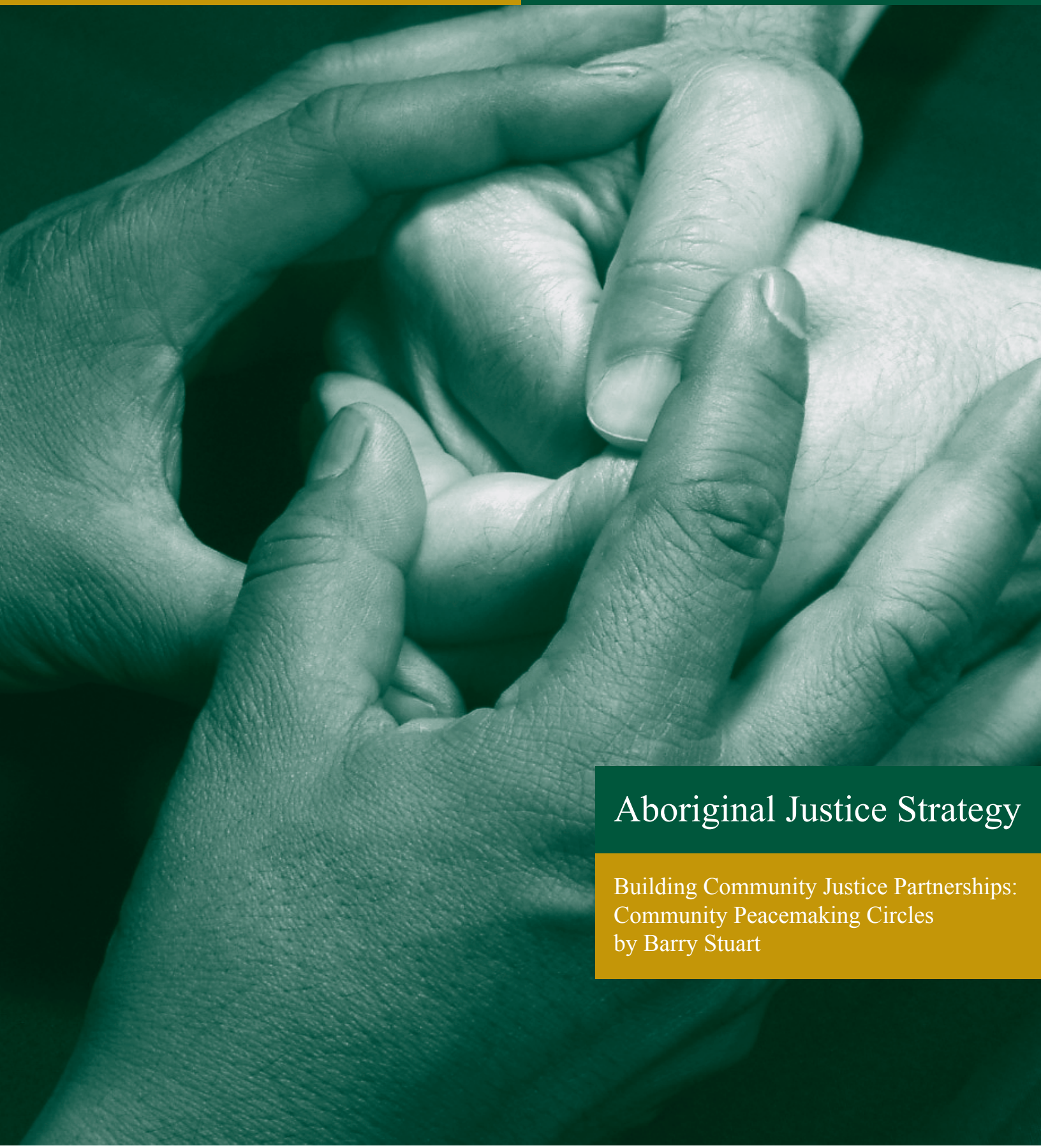

Aboriginal Justice Strategy

Building Community Justice Partnerships: Community Peacemaking Circles by Barry Stuart

Department of Justice Canada
Ministère de la Justice Canada
Canada

Building Community Justice Partnerships:

Community Peacemaking Circles

by Barry Stuart

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Dedication

To those who dream and refuse to yield

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A Thank You And A Hope

Written from the perspective of a judge, this book suffers from too much focus on procedures, on the mechanics of processing conflict. It is mostly “head speaking” not “heart speaking”. I’m working hard to explore beyond procedures, to understand the deeper significance of peacemaking processes. I have much to learn.

I am enormously indebted to those who have inspired and shaped the ideas in this book. I hope they will continue to be patient with my evolution, and tolerant of my struggle to fully understand their teachings, their wisdom. When I started to work with communities I’d come a long way. They’ve taught me I have a long way yet to go.

The ideas, hopes and insights within this book spring from the work of people and communities and government agencies developing new ways of dealing with conflict within families, communities within the workplace. Their work has demonstrated the potential to foster respect and understanding, and to build better relationships through processes based on consensus and peacemaking principles. This is difficult, demanding, often frustrating work.

Many have struggled to develop a better way and feel they have failed. They have not failed. Like small streams flowing into larger rivers, each person, each community has added to the flow of change, to the building of a better way. Their courage, their indomitable will, and their work have pushed us past many barriers, past our failures to try again - and again. May those struggling to make a difference find something in these pages to strengthen their vision.

May we find the caring, tolerance, mutual respect necessary to work together in creating conflict resolution processes capable of addressing all interests in a manner that promotes respect for our differences, and the well-being of our families and communities.

Barry Stuart
March 1997

Key Definitions

- **Community** - *A community is not a place, it is people*. For Circles, the "community" of people may come from a small town, a neighbourhood, or it may be the personal community composed of friends, fellow workers, and family of the parties involved, from many different places. Involving the personal community of victims and offenders significantly contributes to a successful process, and is essential to generating healing connections. Those who believe the Circle process can only be successful in small, isolated communities, fail to appreciate either the flexibility of the Circle process or the dynamics of small isolated communities. For many reasons, *the potential for Circles to successfully resolve the personal immediate and larger conflicts generated by crime, and to advance the immediate interests of victims and offenders, is considerably greater in large metropolitan areas. In carrying out "Personal Circles," the active support of key justice officials is more critical in large metropolitan areas than in community circles.*

- **Partnership** - *Circles are built around a holistic approach and thereby require access to a broad range of resources and services from the family, community, and the state.* A partnership within all sectors of the community, and between the community and professional agencies, fosters a holistic approach. The partnership does not preclude the co-existence of formal justice systems, nor of other community options (Aboriginal justice systems, mediation, diversion, etc.). Rather, the effectiveness of the partnership depends upon and fosters the co-existence of a broad spectrum of other systems of resolving conflict, and responding to crime.

  Each partner contributes resources, skills and information essential to creating fairness and balance within the Circle process. For example, a Judge or Justice of the Peace is a neutral and, if necessary, the ultimate arbitrator to ensure resolutions are not shaped by powerful interests, by particularly vociferous participants, or by a majority of supporters for one party. Similarly, local Keepers of the Circle ensure consensus principles are respected, that all voices are fairly heard and that proposed solutions address all interests in a viable manner. An open, frank flow of information from all parties creates a better foundation for analysis and resolution of conflict. In so many ways, the resources, skills, and perspectives of each partner combine to promote a fair and balanced process, and to achieve innovative solutions, maximizing the interests of all participants.

Part I

Introduction to Circles

"This Circle we're trying to do in my community is not just about offenders and victims - not just about crime - but about all of us working together - learning about each other - learning how to help each other - how to grow - heal together - gives me hope you know to think now my energy need not be taken up in anger - but in learning about how to live together and respect our differences." **(Harold Gatensby, Yukon College, May 1, 1995)**

This paper concentrates on the mechanics, the nuts and bolts, of developing partnerships between communities and formal justice agencies to build shared responsibility for handling crime problems through Community Peacemaking Circles.[1] The primary purpose of this paper is to *describe* the process for initiating, operating and maintaining the community circle process.

Universal blueprints for achieving the maximum potential of a Circle process are neither possible nor useful. Each community must struggle to evolve a process unique to its circumstances; one they build, own and operate. What is offered in this paper is not *the blueprint*, but an illumination of the road traveled in the Yukon. This illumination may help others avoid the deepest potholes that hindered the experience of several Yukon communities in their journey to re-engage families and communities in dealing with conflict and crime.

Missing from this paper are significant discussions about the emotional and spiritual dynamics of the Circle process. These elements, more so than Circle procedures, mark the fundamental differences between Circles and adversarial justice processes centered on pinpointing guilt and punishing.

Appreciating the differences between Circle and Court processes might be easier to grasp by first understanding the spiritual and emotional context of Circles. Certainly, the emotional and spiritual dynamics of the Circle are much more important. These elements are the foundation of the seemingly miraculous changes Circles precipitate in the lives of offenders, victims, their families, and communities – and in many of the professionals who have experienced the "spirituality" of Circles. So why is this paper focused on process?

I could hide behind the suggestion that, as one who has been fully trained, my first priority is to *think* my way through the steps before gaining a *feel* for the impact of each step. That explanation would be only partially true. I have focused on process first for

several reasons. I believe it is essential for other non-Aboriginal professionals seeking to use some form of the Circle with Aboriginal or non-Aboriginal communities to appreciate, much better than I did, that the Circle process is much more than rearranging furniture. Much more preparation is required by all participants.

The most significant reason for setting out Circles procedures, before exploring their dynamics, has little to do with any professional perspective or strategic objectives. Simply stated, I'm not ready yet to do the "heart speaking" necessary to openly share my experiences of the Circle. I'm not capable of being fully subjective about my experience in a manner that violates the professional code of objective inquiry. Further, I have much to digest from my experiences, much to talk about with others concerning both my own and their experiences, and much to learn before I feel able to probe the powerful emotional and spiritual environment of the Circle. While a description of Circle procedures is the focus of this paper, and while "head speaking" is the intended dominant voice – some "heart speaking" could not be denied. Within these pages, some of the joy, excitement, and enthusiasm, as well as the frustration and disappointment, seep into the text. This is more of a warning than an apology to those expecting to find a professionally objective journey through the Circle procedures. If I could have, and hopefully soon I can, I'd let the heart and head both speak about the experience of the Circle.

This paper is written to share, not to instruct or impose. I hope it raises more questions, than it provides answers. I hope it will provoke others to explore ways to use conflict to build healthy connections within families, and among all members of their communities. I have still more questions than answers. I am still exploring – often missing the old comforts of certainty the established system offers – often lost – often discouraged – often wanting to go home to the known realities of highly honed roles, power and security that come with the robe and the bench.

While there is much work to do in making the overdue changes in our formal justice processes, I don't question that these processes are essential in responding to conflict and crime in our communities. Yet neither do I question the need to adapt formal justice processes to the needs of all communities, and to develop autonomous processes within communities. My search for ways to adapt existing formal processes and to build self-reliant processes in communities is driven by experiencing both the unintended damage our formal justice system can impose and the miraculous healing, reconnecting and rebuilding of people and relationships that can happen in processes that empower people in a "good way" to develop their own solutions to conflict in their lives.

The challenge is not to replace mainstream justice processes but to discover what they are best suited to do, how they can effectively work in partnership with other processes, and what conflicts are better served outside the formal justice processes.

Circles: Their Part in Responding to Conflict

There are many methods for engaging communities and families in processing conflict. Many of these methods are necessary to support and complement Peacemaking Circles. The focus on the Circle in this paper ought not to suggest that the Circle is a necessary or exclusive method for restoring family and community responsibilities.[2] If nothing else, my experience with the Circle (as my experience with any process) has unequivocally demonstrated there is no single process or forum capable of accommodating all conflicts. To sustain healthy relationships within a family, a community, a nation or world, *we must maintain a rich diversity of opportunities for purposeful, safe resolution of our differences.*

Peacemaking Circles offer no new or miracle cures. They are but one means of empowering communities and people affected by crime to assume the difficult responsibilities of responding to the social and personal problems surrounding crime. Many crimes are ideally suited for mediation or diversion, which require more community and less formal justice system resources than Circles. Other crimes are better suited for the formal justice system, with minimal community involvement. No one system can ensure an effective response to the myriad circumstances surrounding crime and criminals.

In each community a range of responses to crime is necessary. At one end of the continuum, the formal adversarial justice system; at the other, the family, friends, and maybe a mediator or peacemaker negotiating a solution among all affected parties. Somewhere in the middle of this continuum lies a community Peacemaking Circle – a partnership between the community and government agencies.

The formal justice system has a place, an important place in our society, but so too do systems and values flowing from family and community. Currently, too much responsibility has been assumed by the formal justice system – too much taken away from families and communities – for maintaining harmony and for managing conflict. *We must create a better balance between what the state should and can do, and what family and communities should and can do.*

Community justice shifts responsibility from the state to communities, to families and to individuals for resolving conflict and, in so doing, reinforces families and communities as the cornerstones of our society.

Current practices, funding and attitudes within society, especially within government, cause an excessive reliance upon a state-provided formal justice system. Consequently, formal justice resources are frequently employed unnecessarily and more appropriate community alternatives are underemployed for both civil and criminal issues. Criminal issues come readily into the grasp of the formal justice system through the burgeoning numbers of police, often relative strangers to the community, who direct cases into the justice assembly line. Once into the process, cases rarely are returned to the community, and then only when someone within the formal system “approves”. Such an approval requires the existence of community alternatives, knowledge of community alternatives, and police or Crown confidence in these alternatives.

Emphasizing the differences between formal and community justice processes can overlook the crucial potential for these processes to complement and reinforce each other. There is much work for both processes, but community processes must be the front line, the primary response within communities to conflict and crime. *The formal justice system must become what it was originally intended to be, a back-up to community and family processes for resolving conflict.* To properly realign the functions of the family, community and the state, and to remove the monopoly the formal justice system has acquired over conflict, major changes are required, as follows.

- Significant changes in the culture structures, policies, attitudes, power and funding of state institutions are required to enable community processes to function effectively and, where necessary, to work in concert with the State.

- Significant investment is required in training professionals and community volunteers to work co-operatively, to understand and respect their different values and different processes.

- The quality, accessibility and extent of public information about what the justice system does and what it costs – in monetary and human terms – must be drastically improved for the public to effectively evaluate what formal justice systems and community-based alternatives offer, and what use each can serve.

- *All of us must invest more time, take on more responsibility for the well-being of our families and communities*. On so many levels, we can no longer afford to depend so extensively upon experts, and upon the state.

In a small, vital way, the struggles of communities to establish community Circle processes advance these changes.

Does the Circle "widen the net" of formal justice agencies? Many worry – and so they should – that community justice initiatives extend the reach of formal justice agencies, thereby increasing costs without adding any significant benefit. "Widening the net" is not by itself necessarily bad - if, in widening the net, people who need help, get help. Less than half of the crimes are reported or processed by existing justice services.[3] That can leave many victims – many conflicts - without peaceful, purposeful resolution. The Circle process does reach crimes that would not otherwise be reported. Members of families in crisis have come forward to report crimes solely to get the help the Circle offers. For many reasons, they do not wish to be involved in the formal legal process. Others seeking a different means of resolving their disputes have used the community process. If a Circle process provides a different approach and a different result than a formal justice process, then "widening the net" constructively contributes to peacemaking within families and communities.

Equally vital is the ability of the Circle process to take cases *out of* the formal system. On many levels, in many cases, the Circle process affords the community an ability to

replace state involvement. *Community Circle processes are not about fitting communities into the justice system, but rather are about fitting the justice system into the community.*

Principles of the Circle Process

The fundamental principles of interest-based negotiation, mediation, consensus building and peacemaking that shape Community Circle processes are not new. These principles were a part of the dispute-resolution practices of many European and Asian communities many generations ago, and are still inherent to the philosophy and practices of Aboriginal communities. The concepts of dealing with conflict in a "good way", on rebuilding positive relationships, on maintaining harmony and advancing the well-being of all participants in a conflict have been preserved and developed within many Aboriginal communities. Most of the special skills and special practices now touted in the western world as "Appropriate Dispute Resolution" are derived from long-standing Aboriginal concepts of Peacemaking.

The partnerships formed within Yukon Community Peacemaking and Sentencing Circles draw heavily upon Aboriginal concepts of peacemaking and the practices typically found in mediation and consensus-building processes. Community Circles are neither wholly western, nor Aboriginal, but combine principles and practices from both in creating a community-based process to respond to conflict in a manner that advances the well-being of individuals, families and the community.

Although there are many different kinds of Circles, all Peacemaking and Sentencing Circles share the following fundamental principles that shape the process and outcomes.

Consensus Approach

Throughout the process, from the Justice Committees to Circle sentences and reviews, all decisions are based on consensus. A consensus does not require unanimous agreement. Although all parties may not agree with all parts of the final outcome, consensus is reached if all are willing "to live with the total package." Accordingly, some may not agree with a decision, but their disagreement is not sufficiently pressing to oppose the decision. Having had a full opportunity to participate, satisfied their views were heard and that others endeavoured as much as possible to include their interests, many will feel the process has been fair and will not oppose the result, even though they may still disagree with some or all of it. Rarely are judges or Justices of the Peace called upon to impose a sentence because the Circle has failed to reach a consensus. A Circle process in striving towards a consensus is designed to:

- encourage *all significant interests* to be *represented* and *respected*;
- allow parties to *deal directly* with each other;
- provide an *equal, effective voice* to all parties;

- create a *safe problem-solving environment* that generates frank, honest, respectful exchanges of fears, concerns, interests and aspirations; and
- provide a forum that *builds better relationships*, forges new partnerships, and fosters co-operative, innovative problem-solving.

A Circle process does not aspire merely to formulate a sentence. The consensus-based process is designed to produce outcomes that can:

- improve the working relationship among all participants;
- create better understanding and respect for the different circumstances and values of participants;
- incorporate a broad span of interests in decisions that reflect the collective efforts of all participants; and
- engage the support and commitment of all participants necessary to successfully implement the Circle Plan.

No one retains ownership of a contribution to the Circle. Each contribution is respected and built upon by others. It is this sense of contribution, of common ownership and shared responsibility that lies at the heart of the Circle process. *Reaching a consensus is not the primary objective; striving together to reach a consensus is*.

Interest-Based Approach

Interests that are not irreconcilable can be made so by the adversarial nature of court processes. Potential common ground can be overlooked in the court process. By intensifying differences, courts can increase hostilities within families and within communities. Circles seek out and nurture common ground through an interest-based consensus process. As opposed to a rights- or power-based process, a process based on interests more effectively addresses the underlying problems causing crime. Further, an interest-based process concentrates on each party's principal concerns and depends primarily upon the parties to share the task of finding solutions.

A Circle process seeks to move beyond positions to uncover the party's underlying interests. For example, if the Crown presses for a jail sentence, the Circle will seek out the Crown's underlying interest in imposing a jail sentence. If the interest is in protecting the public, deterring others and punishing the offender, the Circle will explore how these interests can be realized without jail or with a reduced jail sentence. A house arrest with daily family or support group supervision, coupled with an intensive substance abuse and other relevant counselling provided in the home, may address some of the Crown's interest in punishing and protecting while incorporating the interests of those seeking to heal and to reconnect offenders to family and community.

The possibility for creative, innovative solutions depends upon extracting and exploring the underlying interests of all parties.

Self Design

The process must be shaped by the community and be sensitive to the circumstances of each case. No single universal design of the process will work in every community *or* in every case. Accordingly, there must be ample flexibility within the process to enable the parties in each case to modify the process to maximize their ability to work together in resolving their differences.

Communities are constantly adjusting the Circle process based upon their experiences and the particular needs in each case. During pre-hearing stages, the special process needs for each case can be identified and the parties can work together to adapt the process to these needs. The ability of parties to participate in designing the process significantly contributes to their confidence in, and commitment to, the process.

Flexibility

All aspects of the process must be flexible. Not only do the circumstances of each case call for flexibility, but as no one can anticipate what concerns will be raised in a consensus process, there must be flexibility to adjust to new circumstances as the process unfolds.

A fear of such seemingly wide-ranging freedom to adapt to new circumstances before and during a process is held primarily by those who have not been engaged in a consensus process. Flexibility builds confidence in all participants that the process, in a respectful, reasonable manner, is capable of adjusting to new information, to new partners, or to any unforeseen circumstances.

Spiritual

I have experienced and appreciated how the Circle can be a spiritual awakening for many participants. Much of the energy and desire to bridge significant differences flows from the spiritual essence of the Circle process. Circles, more so than mediation or multi-party consensus processes, foster a spiritual awareness within and among participants.

Several integral concepts of an aboriginal peacemaking process, “peace within”, “holistic healing”, “right relations” and “harm to one is harm to all”, significantly contribute to the spirituality of Circles. In seeking “peace within”, participants build within themselves the capacity to resolve much of the internal tension and conflict that can hinder their capacity to reach out to others in a “good way.”

When participants embrace these concepts of Aboriginal peacemaking, a collective spirituality emerges that significantly assists in developing common ground and in building consensus.

PRINCIPLES COMMON TO ALL CIRCLES

PROCESS

- PROCESS APPROACH
- INTEREST-BASED
- SELF DESIGN
- FLEXIBLE
- SPIRITUAL
- HOLISTIC HEALING

PARTICIPANTS

- INCLUSIVE
- VOLUNTARY
- DIRECT PARTICIPATION
- EQUAL OPPORTUNITY
- RESPECT

PRINCIPLES DERIVED FROM

- PEACEMAKING
- MEDIATION
- CONCENSUS BUILDING

Non-Aboriginal participants and non-Aboriginal Circles also experience spiritual connections. Sharing the pain and joy of working together, of sharing responsibility for the collective well-being of all participants fosters a spiritual quality in all Circles

Comment

Conflicts, especially the conflicts precipitating, surrounding and emanating from crime, profoundly affect the hearts and souls of participants. Probing and overcoming the fear, anger and pain, repairing the damage that crime causes, calls upon a spiritual dimension that, while difficult to describe, is undeniably an inherent feature of a successful Circle process. It is not simply a unique or different set of procedures that makes Circles work. It is the spirituality arising from and reinforcing the collective will of all participants to share the difficulties of moving through conflict to find understanding, to heal and to create a caring, respectful co-existence within communities.[4]

Holistic Healing

The Circle process is based upon the *connectedness* of all things. Everyone in the Circle is connected, related on many levels of interest and existence. In opening prayers, references by Elders and Keepers to “all my relations” extends the prayer not only to all people, but to all things animate and inanimate. While this notion of relationships and connectedness encompasses the Circle process, the most immediate and obvious manifestations of this notion are reflected in the Circle process in a number of ways.

All the circumstances of the offender, victim, and offence are examined to understand the underlying causes of the crime in order to appreciate what relationships must be healed and strengthened – and called upon in developing a healing plan.

The healing plan stretches beyond the offender and victim to embrace all aspects of their lives, families, and personal communities that are necessary to construct a holistic healing plan. For instance, a woman who constantly appeared before the court for shoplifting and theft had graduated up the ladder of court punishments to the last resort – jail. Several jail sentences had not stopped her criminal activity. The Circle healing plan addressed her depression, drinking, home environment, and low self-esteem with a plan that involved:

- neighbours helping with the raising of the children;
- family counselling with an Elder and professional counsellor;
- engaging her in a team working with youth in the community;
- both the offender and her spouse attending residential substance-abuse treatment;
- a life-skills course that would lead to employment;
- meeting with victims to understand the consequences of her crimes and a plan for community work recommended by victims in lieu of restitution;

- a support group, including others on similar healing paths; and
- Healing Circle reviews of the holistic plan.

This plan addressed the needs of her family, victims and community, and called upon their collective resources to implement the plan. Her spiritual, emotional, mental and physical needs required the assistance of everyone she was “connected to”.

Healing – not punishment – is the central, but not exclusive focus of the Circle. There are elements in every healing plan that impose conditions that are often harsher or more demanding than the punishments meted out in courts. The Circles focus is healing relationships, and generating healthy connections.

The importance of generating “right relations” presses all participants to respect and understand the values, interests and differences of others. Generating better connections among all participants, to each other, to their families, and to the community is a vital part of the Circle process.

Recognizing that the well-being of any individual is directly connected to the well-being of others, and to the well-being of the community, is essential to the success of a Circle. This recognition arises from the Aboriginal peacemaking concepts that “harm to one is harm to all” and, conversely, that “the joy of one is the joy of all”.

Inclusive

Significant efforts are made to encourage everyone affected by the offence to participate. The larger the base of participation, the greater the potential to build enduring solutions that garner widespread support, fully utilize the best resources available.

The absence of key participants limits the potential of a consensus process. Consequently, during pre-hearing preparation significant energy must be invested in trying to ensure their participation or at least to ensure their interests are fully included in the Circle process.

Voluntary

Everyone participates voluntarily. Voluntary participation is not a weakness, but strength of the process. The parties are involved because they choose the Circle process over other alternatives. All parties must work together to ensure the process remains, for all participants, the best alternative for addressing their outstanding issues. It is this collective, reciprocal responsibility to retain participation of all others in a voluntary process that marks a significant strength of Circle processes.

The voluntary nature of the process makes it particularly important to have the full support of justice partners. While some Circles can proceed without their involvement, and Circles requiring their involvement can proceed even though justice officials, while

present would rather not be, the best results derive from their keen, voluntary participation.

Some Circles proceed without direct victim participation. In such Circles, their interests must be included through one of the many means available to the Circle. Further, if victims wish to exercise their ability to use the courts for their input, this means must also be available and their input in court taken into the Circle.

The formal justice system contributes significantly to the community partnership by offering a clear alternative at all times for any offender who no longer desires to voluntarily participate in a Circle process.

Direct Participation

By participating directly in all decisions affecting their interests, all parties are empowered to take responsibility for their interests and their lives. Circles aspire to create conditions allowing everyone to participate in the process. Direct participation generates a sense of ownership in both the process and outcomes. Satisfaction with the process, especially with its inherent fairness, encourages participation in building lasting outcomes.

Empowering individuals, whether as offenders, victims, family, or community workers, to participate, to contribute, and to take responsibility, is an integral part of building positive connections and reconnections within families and to communities. Equally important, participation builds the skills and sense of belonging that is essential to community well-being. Being empowered to participate in Circles builds in each participant invaluable connections to others and to the community.

> *"Now we can start saying something for ourselves for the first time - in court before - didn't do nothin' - let the lawyer talk. Seems like no one really cared - everyone just doin' their jobs. Now (in the Circle) people care - speak up and makes a big difference eh! Gettin' to workin' together makes us feel like we got a community here."* (Leonard Gordon, Kwanlin Dun, 1995)

Equal opportunity

A consensus process depends upon the ability of everyone to participate effectively. An effort must be made to create equal access for all participants to information, advice, support, and to any resource needed to promote and sustain their full participation.

All parties have different experiences, different access to line justice agency support, different financial means and different levels of support from family and the community. For the process to be fair, for all interests to be equally addressed, the process must strive to overcome barriers to effective and equal participation.

Pre-hearing preparation significantly assists in identifying the assistance required to ensure as much as possible everyone enjoys an equal opportunity to participate.

If the process is not fair, a consensus will be very difficult to reach, and if reached will be unlikely to adequately incorporate all underlying interests, or be widely supported or successfully implemented.

Since in a consensus process decisions are not made by voting, fairness is not dependent upon an equal number of representatives of each side, but depends upon all interests being adequately resourced and supported to participate effectively.

Respect

The ability to share interests, to be frank, trusting and to engage in creative problem-solving cannot be fully realized without respect for others, for their interests and values. Disrespect for, or misunderstanding the values and interests of others, can severely hinder the mutual search for common ground in building an agreement.

The Circle process does *not* require acceptance or approval of someone else's values, but does seek to create tolerance for different values, and respect for people with different values. Mutual respect for differences helps parties focus on the merits of outstanding issues, removes many of the barriers to building a consensus, and fosters better working relationships among the parties.

Differences, if respected, can provide the basis for innovative solutions to the difficult questions raised in Community Circles.

Summary

Community Circle processes built around these principles enable community values, not justice values, to dominate and shape exchanges and outcomes. These principles make the difference between a community justice process that primarily serves community needs and one that primarily serves the needs of a formal justice system. The partnership between the community and formal justice agencies, if based on these principles, helps ensure the Circle is not simply an extension of the formal justice process, but rather is a process with some common goals, although it pursues these goals in a fundamentally different manner.

Different Kinds of Circles

Throughout Canada, and in every community in the Yukon, there are different kinds of Circles. Each Circle differs in the degree of involvement of formal justice partners, in the procedures followed and in the roles of key players. Some Circles involve only Aboriginal participants and some involve only non-Aboriginal participants, but in the Yukon most Community Circles involve both Aboriginal and non-Aboriginal people.

Healing Circles work through local healers or mediators to resolve differences without anyone participating in a formal capacity. These Circles can prevent crimes by dealing with tensions and conflicts before they erupt as crimes. These Circles may also deal with incidents not reported to police or diverted by police. The outcomes of these Circles may be self-executing private contracts, diversion agreements or joint submissions to a local Justice of the Peace, to a Judge, or to a Community Circle.

In some Circles dealing with crimes, justice agencies are represented by a local Justice of the Peace, a local police officer, and court worker. Circles dealing with more serious crimes involve a Judge, Crown, and defence counsel. In all Circles, irrespective of the composition, an equal opportunity for all parties to participate is essential.

Finally, Circles may simply be established by the Judge stepping off the bench, inviting the parties, key resource people, probation officers, treatment officials, and others from the personal community of the offender and victim to sit in a Circle. These "Sentencing Circles", while less likely to generate community based preventive and protective measures, and unlikely to be as effective as Circles involving the full community process, can incorporate community sentencing options and involve participants in building consensus-based solutions.

This paper describes Community Circles, run by local Keepers, open to the entire community and including a Judge or Justice of the Peace, police or Crown, defence counsel or court worker, and other relevant justice and treatment officials.

Evaluating Community Justice Initiatives

In approaching community-based justice processes, lay people want to know if there is widespread community support, if the community is gaining a sense of hope by being empowered to address its own problems, if the community process is fair, balanced and respectful of all participants, and if community and family well-being is promoted. Inquiries from professional justice officials focus on costs and recidivist rates. The questions asked reveal quite different approaches to conflict within the community. Communities recognize people return from jail less connected to their communities and more inclined to dysfunctional behaviour. Most professionals do not live in the communities where they work and are not at home to experience first-hand the impact of progressively harsher jail sentences on their neighbours and neighbourhoods.

What impact have community-based conflict processes had on costs and crime rates? In New Zealand, within four years, the introduction of the Family Conference reduced the number of young offenders before the courts from 13,000 to 1,800 cases a year.[5] In Puerto Rico, the community based Pence Platt Project is credited with reducing young-offender crime by 47 per cent in communities served by their projects.[6] In Japan, where community volunteers working on crime outnumber offenders and where criminal justice policies rely extensively upon voluntary community associations to reintegrate offenders into the community, recidivism is among the lowest in the world.[7] In Genese County, New York, where the community is involved in all aspects of the system, from attending

to victim's needs to counselling offenders, the county jail population has been drastically reduced. Unlike other New York State county jails that run over 100 per cent capacity. Genese County jails have rooms to spare. Reducing their use of jail not only serves community well-being but enhances community revenues.[8]

These are but a sampling of stories from all over the world of what communities can do to make a difference. There are alternatives to our growing dependence upon professional resources and our primary reliance upon using punitive sanctions. The alternative is vastly less expensive, considerably more effective, and generates vital secondary benefits. The alternative depends upon engaging families and communities in assuming responsibility for the social conditions within their community. Hard to do in our modern society? Yes, but it is being done. It can be done – it must be done.

As crime rates and violence increase, costs spiral and public investment is diverted from education, health, social services and economic growth to processing and housing criminals. To our peril, we divert public investment from preventing crime to processing criminals.[9] In America and in Canada, through good and bad economic times, the justice industry consistently experiences growth. Public expenditures on crime, despite widespread, severe government austerity measures, despite persistent failures of justice programs to make significant differences, continues to experience phenomenal growth.

Although community justice projects do reduce recidivist rates, it would be a tragic oversight to rely exclusively on recidivist rates to compare the success of community-based justice programs and professional justice programs. Community justice initiatives that shift significant responsibility to communities do much more important work than merely reduce recidivism.[10]

What is this work? It is the work of rebuilding communities. In several ways community based justice initiatives significantly build or rebuild communities, rekindle pride in belonging to a community, enhance self-esteem in members and, in doing so, advance the well-being of all community members.

By improving and relying upon informal social controls within communities, Circle processes can significantly contribute to preventing crime by:

- strengthening the ability of individuals and families to assume greater responsibility;
- reconnecting people in trouble to positive environments within their families and communities;
- rebuilding a sense of community;
- redressing the underlying causes of crime; and
- healing broken people and broken relationships.

Community Justice and Community Development

Community development is as central to the work of Circles as community justice.[11] This is one of the fundamental advantages of Circles over formal justice systems. Unlike Courts that focus principally on changing the behavior of offenders, Circles focus on a much broader range of changes. Circles strive to change relationships by changing the circumstances of offenders, victims, and of their respective "communities". Offenders who change, but return to personal environments that have not changed, soon return to old behaviours, old habits. The state cannot create, and cannot afford to continue trying to create professionals or institutions to replace the powerful influences for changing anti-social behaviour and for maintaining socially responsible conduct that families and communities can provide. It makes no sense to keep trying to do so. Both short and long-term gains flow from strengthening families and communities.

Circles are *not* just a different way to process crime. Circles are about community development, about rebuilding a sense of sharing the responsibility of citizenship. In building the social capital[12] of communities Circles revive and build what is now often desperately missing, a community-based capability to deal with conflicts, with problems *before* they mature into crimes. *Informal social controls within families and communities have always proven to be much more effective and much less expensive than formal justice agencies in preventing crime.*

By enabling individuals, families and communities to make decisions about conflicts within their lives, Circles strengthen connections to families, to communities. Resolving conflict in a respectful manner is an essential building block of any healthy relationship within families, within communities. Currently the formal justice agencies, by monopolizing responses to conflict, rob communities of a key building material of community – involvement in conflict resolution.

All citizens must take up the challenge of ensuring key decisions affecting their communities are *not* exclusively delegated to experts. Whether the experts are elected or not – they cannot persistently make good decisions in the best interests of the community without active, constant community involvement.

History repeatedly demonstrates that abrogating responsibilities within our families, within our communities to others, eventually undermines the well-being of these vital institutions that sustain our well-being as individuals, as a society. Maintaining our responsibility as members of families, of communities and as citizens, is demanding work – work that cannot be substantially delegated to others. Participating in doing the work of citizenship, in the life of the community, in the daily demands of the family, keeps democracy healthy, generates community well-being, and assists families in providing a vital sanctuary for everyone's needs. This belief in meaningful participation in conflict resolution by those affected, in the value of building social capital by enhancing the relationships and connections within communities, underlies all my observations of the Community Circle process in this paper.

In many respects, the most important story about community Circles is about community development. In this paper, a focus on the Circle process will only peripherally and incidentally touch on the powerful invaluable linkage between community development and community justice.

An abiding, sustaining belief in change, in the ability of all people, all institutions, all processes to change, a growing appreciation of the interconnectedness of all things, of all people, and an irrepressible faith in our individual and collective ability to find the humility, courage to learn from our mistakes, all stem from many influences. These are the stuffings of my beliefs and hopes that permeate this paper.

"Life is change – and to image the opposite is to deny life." (Rupert Ross)

Part II
Maintaining Community Initiatives

"Circle belongs to everyone - we begin here to do what we must as a community - to take responsibility for what happens in our community - we got to do the best we can - no good leavin' it up to others to do it. The Judge here - I know he cares - wants to help, but we got to do it - these are community problems - not only Judges' problems." **(Ed Scurvey, Kwanlin Dun 1993)**

Some important factors essential to building and maintaining community justice partnerships emerge from Yukon experiences.

1. Pre-Implementation Planning

Simply "jumping into it" treats the Circle as simply "another formal justice program". The Circle is not merely a substitute for a sentencing hearing. Circles involve a significant shift in attitudes, goals, power, values and participants.

The advantages of a Circle cannot be attained by changing the seating arrangements on the day of sentencing. Circles are not simply a different forum, but involve a fundamentally different *process*. To effectively make the transition from the Court process to the Circle process, significant pre-implementation planning must be carried out.

Experience demonstrates the need to invest time in training, in building community awareness, support and involvement, in gaining justice agency support, in engaging the essential support for victims and offenders, their families and friends to fully participate, and in developing procedures that best serve the community's capacity to take responsibility before, during and after the Circle hearing.

Prepared and empowered, communities, families and others can use the Circle process to effectively advance healing, reparation, and all the important objectives of community justice and community development. Without pre-implementation planning, the Circle is vulnerable to misuse.

2. Community Ownership

Community ownership is critical to the initial success and, especially, to the longevity of Peacemaking Circles. Ownership derives from ensuring the impetus for starting, the primary influence in designing, and the controlling hand in operating the Circle, are community-based.

When resources are thin or non-existent, or when the initial pioneering founders are burnt out, people in the community must marshal the grit "not to let it die". This grit is often only found in the pride of community ownership. When professional agencies oppose the process or withdraw support, or when a failure within the project is blown out of proportion, taken out of context by the media, again it is the determination grown from having given life to the process that musters the perseverance within a community to keep the process alive. Inspiring people to make the personal sacrifices necessary to "make it work" is one of the many crucial contributions "community ownership" bestows.

From the inception of a community-driven process, regardless of whether the community aspires to assume full responsibility, or to construct a partnership with one or more public agencies, a sense of community ownership must be present – and must remain throughout the operation of the project. Of all the elements of a successful community-based project for managing conflict, *community ownership is indispensable*.

3. Sensitivity to Community Circumstances

The economic, social and cultural makeup of each community are fundamentally different. Historical traditions, size, wealth, human resources, access to treatment facilities and a host of other differences are crucial factors in shaping a project that "fits the community". Any initiative must respect the unique stages of development, capacities and needs within a community to assume greater responsibility. The community, not justice professionals or their agencies, have the best sense of when, how and to what extent communities can become involved.

The difficulty justice agencies confront in finding the flexibility to ensure their contribution to a community initiative is always sensitive to community circumstances, derives in part from their centralized control of operations and policies. Centralized management fosters a "one size fits all" approach. Managers see the internal interests of their agencies served by a centralized regime that allows them to manage and measure budgets, policies, people and practices within the framework of one overall strategy. The originality of community initiatives can generate a need to significantly deviate from mainstream budgets, policies and practices. Central managers tend to view these deviations as undermining their ability to manage. The interest of centralized management regimes can inadvertently deny the flexibility necessary to foster community justice.

For example, the existing policy of rotating police officers every two to three years may serve the best interests of centralized managers, but rarely serves the best interests of communities. Communities have little if any input into who comes, who stays or who goes. A police management policy sensitive to local community interests would ensure that police officers who are interested and skilled in community-based policing are posted to communities engaged in community initiatives, and that officers working intimately with community initiatives are allowed to remain – especially when both the communities and the officers wish to continue their partnership.[13] Much is lost in

building community-based initiatives when police officers, who have gained community trust and have been instrumental in helping build community initiatives are transferred out. More is lost when the replacement has neither the inclination nor the skills to carry on the close working relationship with the community. The primary building materials of successful community initiatives are the relationships of trust created over a long period of time through many shared experiences.

Transferring new police officers into a community every two or three years, and changing prosecutors every year, at times every Circuit, is particularly detrimental to community initiatives. Both the prosecutor and police have within their discretionary powers, and within the manner they carry out their responsibilities, the ability to make or break community justice. Both, if unfamiliar with a community can, despite their best intentions, make decisions that undermine a community's ability to assume responsibility.

Communities can secure the support of most local justice officials for a community justice initiative, but cannot afford the energy required to constantly adjust to, and "cultivate" a new "justice" partner.[14]

The barriers to effective community partnership are not unique to the centralized management practices of police and Crown. All justice agencies have similar management styles that inadvertently generate problems for community justice. While all justice agencies speak of the need for community-based partnerships as an instrumental means of reducing costs and inefficiencies, their continued focus upon professional resources and centralized management hinders the flexibility necessary to forge community partnerships.

Comment

The justice system, driven by centralized managers imposing their will through professionals in the field who are relative strangers in most communities, can suggest a neo-colonial arrogance of knowing what is best for communities they know little, if anything, about. The dominance of central policies and senior managers flows in part from the absence of an effective community voice in decisions about the deployment of justice resources. Creating a strong community voice through local justice committees can significantly improve the ability of a community to ensure mainstream justice policies are sensitive to community needs.

While a compelling argument exists for common standards for justice services in all communities, this argument has driven control of justice policies too far into the hands of central managers, and produced too many policies and practices that solely serve the interests of justice agencies. Excessively centralized control of justice resources needlessly sacrifices vital local interests, and ignores the knowledge and skills of local officials. Concentration of key justice decisions in the hands of senior justice bureaucrats hinders the evolution of community justice.

4. Widespread Community Understanding and Support

Build early, build widely and never stop building community support. In so many ways, *widespread community support is the lifeline of Peacemaking Circles, of any community-based-initiative*. Securing community support is not about "tooting your own horn" – it is about ensuring a broadly based, clear understanding of the community initiative.

Discussion groups and briefings by members of the justice committee both for the public and for specific groups such as Service Clubs, business leaders and government departments keep the public informed and develop opportunities for engaging a wide range of necessary support. Acquiring and maintaining public support for innovative changes within a highly sensitive public area such as justice requires a constant flow of public information.

From the outset, each community justice initiative must be constantly inventing creative means to generate support from a broad spectrum of the community.

Bad news about failures within community justice projects travels faster, wider and with more vigour than good news about successes.

Active communication links to the immediate community and within state agencies must be maintained to talk, to explain, to hear and respond to criticism. Statistics about what is *really* happening can go a long way to counter what a few widely publicized failures lead many to assume is happening.

There is a realistic, hardy appreciation among many in communities about unwarranted or unjustified criticism:

> *"Negativity from all quarters comes - but I accept it as a part of growing - as part of doing something new - doing something different always draws complaints from people who don't know anything about what we are trying to do or doing".*
> (Joan Graham, Community Justice Volunteer - Haines Jct., 1995)

5. Government Support

The longevity and reach of a community justice process depends upon support from all levels of government agencies. While commitment is necessary from line officials, commitment is equally important from all managerial levels up to and including the Minister. This commitment can only be maintained by keeping lines of communication open and active between the community and senior managers. An advisory committee can provide this essential connecting link for the partnership.

Much of the stress professionals experience in communities emanates from the excessive control over community conflict they and their agencies exercise, and from

the consequential excessive community dependence upon professionals. By encouraging community ownership, by treating the community as a genuine partner in community justice initiatives, the personal and working environment for professionals improves immensely, and their ability to realize agency objectives can be significantly advanced.

A genuine commitment by professional partners to support, respect and empower their community partners is needed to realize the advantages of a partnership, and to survive the challenges families and communities face in assuming responsibilities for conflict.

Comment

Indifference and opposition from within key agencies can cripple and in some cases defeat community justice initiatives. The "bad mouthing" of community justice by any line agency, especially by police, induces public wariness and opposition. Senior managers within these agencies must take steps to respond to genuine concerns and root out malcontents who prefer to buttress their views with personal biases rather than facts. Similarly, managers within community justice projects must be patient, not overly react to opposition, and pursue every opportunity to build an open, constructive communication link to professional partners.

A point person for all government agencies, especially for justice agencies, should be identified. The point person could take on the principal task of co-coordinating government participation, and identifying and addressing any problems calling for changes within government policies or practices. A point person may be particularly important in large urban centres where Circles work primarily with "personal communities". The point person must have "status" within the hierarchy and ready access to all formal agency managers.

There are numerous advantages in using a point person for government agencies, but there is also a potential significant disadvantage. A point person may cause senior managers to draw back into their hierarchies and thereby cease being actively involved, losing both interest in and understanding of community justice. Community justice programs risk becoming a peripheral part of the overall process if senior managers draw back from active involvement. With senior managers actively involved, community justice processes have the potential to handle a major portion of the crime in *any* community or city.

6. Importance of Volunteers

While I was wrong to believe a community justice system – even with active justice agency support - could function solely on the contribution of volunteers, I remain convinced volunteers must be the central resource of any community justice process. Without their input, many community justice goals, and certainly all of the essential community development goals, cannot be realized. Volunteers are essential – and must

be treated as essential. This requires providing logistical support, training, justice agency co-operation and funding.

Acknowledging and respecting volunteers as invaluable resources requires both communities and government agencies to take appropriate measures to provide the requisite care of volunteer resources. The necessary investment in appropriate care and maintenance of volunteers encourages new volunteers to come forward and avoids "burnout" of existing volunteers. "Burnout" can destroy a community justice initiative in several ways.

- **First:** Burnout can remove too quickly the key pioneering members of the community justice initiative whose energy, insight and commitment enabled the project to survive early growing pains and challenges. The loss of their vital experience can precipitate repetition of costly mistakes and destroy momentum.

- **Second:** Burnout of the first wave of volunteers will discourage others from volunteering. Many will believe the project imposes impossible demands on anyone involved.

- **Third:** Constant turnover in volunteers undermines the overall competence and confidence of the community project in acting as an equal, forceful partner with formal justice agencies.

Preventing "burnout" requires effective training, support and management of volunteer resources.

Training

Training volunteers in counselling, peacemaking, mediation, consensus building and other interpersonal skills builds their confidence and competence in tackling the work of community justice. Not knowing, or not feeling confident about what they are assigned to do can significantly raise anxiety levels and thereby contribute to burnout.

Without training on how to access and work with formal justice agencies, many volunteers become frustrated in being bounced from one bureaucracy to another when trying to acquire information or carry out simple tasks requiring co-operation from a line agency.

A joint training session involving volunteers and line justice officials can immeasurably advance both the *ability* and the *desire* of all partners to work co-operatively.

Matching Interest and Responsibility

Volunteers may be assigned once a year to be a Keeper, member of the Circle, or to be part of a support group for an offender or victim, or work in any other capacity in which they feel comfortable and competent. Assignments of volunteers must consider their

interests, skill and time availability. Assigning to volunteers responsibilities that fall outside their skill levels or interest can quickly undermine their enthusiasm. Intake procedures, reinforced by regular reviews of workloads, are necessary to assess what volunteers want to and can do, and to ensure they do not take on more responsibility than they can handle. Burnout can be caused by trying to do too much or by a sense of guilt or failure in not being able to successfully complete work that is simply too much or too difficult to accomplish alone.

Careful management of volunteer resources is indispensable to sustain and enhance any community justice initiative. Relying too much on a few hard-core “super” volunteers fails to engage the community or engender overall community development.

Too often “super” volunteers, those who throw themselves into working in the Community Circle process, take on overwhelming emotional, financial, and time commitments. They suddenly simply disappear – having completely exhausted their capacity to continue. When they do disappear, a large energy source is lost, a major underpinning of the organization is gone. These sudden disappearances of dedicated volunteers can be devastating to community justice on many levels. “Super volunteers” must be contained within reasonable workload responsibilities regardless of their enthusiasm to do more.

Sharing Responsibility

The emotional and time pressures of working within community justice projects can be overwhelming. Volunteers working in teams, or at least with one other person, helps prevent volunteers from becoming isolated from others and overburdened by a particularly demanding assignment. Sharing responsibility, working in teams, incorporates the necessary flexibility to reduce hard choices between responding to demands from their personal lives and from their volunteer work. Most importantly, working in teams provides the support and insight of others in working through difficult challenges.

The sense of being a part of a “team” or working together with others in their community is essential to building a sense of community among volunteers.

Knowing Time Commitments

Not knowing what time demands will be imposed keeps many potential volunteers away. Responsibility must be matched to the time commitment each volunteer can afford. Volunteers will stay longer if they feel they are not being overburdened and not letting others down by not being more involved. Respecting what volunteers can contribute, and not abusing their contribution by overloading them, retains their interest and support. The longevity of volunteer involvement is the best means of attracting others and of building credibility within the community.

Roster of Volunteers

The justice committee should maintain a roster of volunteers to work as support workers or participants in specific cases before the Circle. Spreading the work of a community justice initiative reduces vulnerability to burnout caused by extensive reliance on a few hard-core volunteers. Seeing new faces, new volunteers becoming involved, significantly raises the spirits of all people working within a community justice initiative. Community justice committees must constantly recruit and train volunteers. From a roster of volunteers, the community justice committee should assign volunteers in accord with a volunteer's availability, time commitments, skills, interests and preferences to serve.

Access to Help

Isolation fosters burnout. Volunteers must have ready access to help from other volunteers, from professional, community and line agency resources. Those with the expertise to assist must be easy to access. Easily accessible and enthusiastic help from professional partners motivates, and helps sustain volunteers.

Breaks

Volunteers need breaks. They need time off to rejuvenate, time they can take without feeling they are letting others down, without feeling guilty for saying "I need a break". The demands of community justice can be very emotionally draining. Time out, or finding an entirely different way for volunteers to contribute, can sustain the well-being of volunteers.

Mutual Respect

A lack of mutual respect between formal justice agency professionals and volunteers creates debilitating adversarial relationships. A negative relationship ultimately saps the energy and commitment of many volunteers.

Volunteer burnout can be influenced by an obviously uncooperative attitude within line agencies, and by a volunteer's inability to easily and usefully access line agency resources. The first step in generating respect among the partners is personal knowledge of each other's role and unique contributions. The second step involves gaining a mutual appreciation of how working together can advance their respective objectives. Once that occurs, a working partnership can evolve that avoids counter-productive adversarial interactions between community volunteers and professionals.

Structural Changes within Professional Agencies

All agencies easily adapt to utilize volunteers when the volunteer contribution aligns specifically with existing agency programs. However, the organizational structures of justice agencies are not especially suited to *share power* and *work closely* with

community organizations that aspire to be more than extensions of a line agency. The composition, structures, functions, resources and objectives of professional agencies and community organizations are fundamentally different. Melding these two quite different organizations into a community justice partnership calls for many significant changes, especially in decision-making and in the flow of information. Internal changes within both partners' structures can be made to accommodate the needs of the partnership *without* compromising the independence, confidentiality, neutrality, or integrity of people, policies or practices. Successful accommodations can be made if *both* parties desire to do so, and work together to find a way.

Appreciation and Recognition of Volunteers

Rarely are the contributions volunteers make adequately respected and appreciated. Community recognition dinners, certificates of appreciation, awards, community honour roles, naming volunteers as "Keepers of the Community" – any number of imaginative means of recognizing their work can reinforce and energize volunteers. The daily spontaneous personal expressions of appreciation from professionals and other citizens can mean as much or more to volunteers as any public ceremony of appreciation. Failing to recognize and celebrate the contributions both volunteers and professionals make to the community overlooks opportunities to reinforce the importance of community justice, to promote public support, and to properly respect the sacrifices and work of people struggling to advance the best interests of their community.

7. Focus on Objectives

Creating a clear set of reasonable objectives from the outset, and constantly assessing these objectives in light of experience can help community justice survive the first few difficult years of development.

Invest time in working out and publicizing clear objectives. This helps identify from the beginning what is needed to pursue objectives. It clarifies, for all partners and the public, the purpose and scope of a community justice process and avoids unrealistic expectations that can cripple any community-based initiative.

A clear understanding of, an unswerving focus on, and a full appreciation of, the objectives of community justice by all volunteers and staff of community justice initiatives is essential for many reasons. Not the least of these reasons is to avoid being discouraged by measuring the success of community justice solely on the basis of the formal justice system's objectives. For example, recidivism rates may be used to significantly measure the success of the formal justice system, but should *not* be used to significantly take stock of the value of community justice. In the Yukon most offenders in Circles have long histories of substance abuse and lengthy serious criminal records. They are often deeply immersed in a dysfunctional life. After the Circle, if they offend less often, less seriously, and are still trying, this is recognized within their community as a significant improvement and a mark of success. Finally, as community justice is also about community development, improvements in the overall circumstances of

families and communities are as, and can be, in the long run, more critical than improvements in any one offender.

As community justice objectives encompass more than just reducing recidivism rates, the measures of community justice initiatives must not simply focus on this narrower, primary criminal justice objective.

8. Evaluations

Evaluations are a necessary tool for community justice partners. It is especially important not only to know what works and what does not, but why. Often something will work for reasons totally unrelated to the initial design.

Who Should Evaluate?

The initial evaluations should be carried out by those who designed and have participated in the process. They know the system, know what it was intended to do, and will gain a better insight into the subtle adjustments that may be necessary to make enormous differences. Insider evaluations are less expensive and easier to set up and complete. When the community justice initiative has had ample opportunity to work through growing pains and make adjustments, outside evaluations may be necessary to provide the motivation for continued funding support. Evaluations *must* involve all participants. Everyone's perspective and input helps identify problems and beneficial changes that any one perspective could easily overlook.

What Should be Evaluated?

A proper evaluation of the changes advanced by community justice initiatives must embrace all the changes - not just the changes within the usual "criminal justice perspective". Circles are not just about sentencing offenders but about building communities on many levels. For example, the Circle process develops participatory skills that encourage many to become engaged in other community activities. The value of the Circle as a training ground or recruiting source for members to engage in other community processes cannot be overlooked.

Often missed in assessing the impact of the Circle process are the number of people who have *not* been through a Circle process but who are helped out of a life of substance abuse or crime by offenders who have been through the Circle, or by those who have successfully participated in a Circle Support Group.

Comment

In many communities, offenders who have been through the Circle and changed their lives are not just role models to inspire others, but they actively pursue their "old drinking buds" to help them on their healing path. The success of the Circle cannot be measured solely by what happens to

offenders who go through the Circle, but must as well embrace what these offenders do to change the lives of other offenders.

Based on discussions with both Circle participants and their "recruits" a study of this extension of the Circle influence is warranted. My guess is that twice as many success stories are generated by the work of offenders and their support of others whose lives involve repeated offences. This impact is particularly profound, when one considers many of these people in the past, when they emerged from jail, influenced their friends to join them in crime. In the past, they expanded their "circle" of friends to become involved in crime; now they expand their "circle" of friends to cease committing crimes.

"We're getting our men back now - they're working to help each other make it - you know makes me so proud - gives me hope to see them leave the Circle and pay us back by getting others to follow and work with them. It makes a big difference in our community - we see it for sure." [Haines Junction Community Justice volunteer, 1994]

The secondary impact of Circles, of most community justice process, generates invaluable contributions on many levels within a community. Any evaluation used to assess the justification for continued or increased funding support must include these important beneficial secondary impacts.

Use of Evaluations

If the designing, implementation and assessment of any evaluation involves all partners, the evaluation will strengthen the partnership and be constructively utilized in building the community justice project. Evaluations can identify strengths and weaknesses and reveal what changes the partnership must make.

Evaluations should not be, as they frequently are, considered the sole basis for determining funding support for the project. The debilitating – even severely destructive – imposition of annual evaluations designed primarily to determine the continuation of annual funding must be avoided.

There must be multi-year funding. Without it, the project is driven too much by the annual evaluation. Annual evaluations tied to funding support limit the flexibility to evolve in accord with community experience, preclude attracting and keeping excellent staff, and chew up too much valuable time of community justice managers in processing annual evaluations and in negotiating continued funding.

"The staff don't know from one month to the next if they will have a job - the negotiations drag on for ever - it is killing us - draining our energies and forcing us to spend too much time on government studies, on paperwork than on the people who need help. Sometimes I wonder if the little funding we get is worth the time we put into trying to get it. Seems like a set-up for failure – you know,

just enough money to get us going, but not enough for us to succeed - and then drag us into these negotiations over funding details that go on and on." (Rose Couch, Program Manager, Community Justice, 1995)

Further, annual evaluations force a concentration on short-term changes geared to the specific jurisdictional interests of funders. This concentration sacrifices the more important long-term changes that community justice gradually, but significantly creates.

Comment

The enthusiasm to evaluate, especially to point out the failings of community justice initiatives by government researchers, by academics, and by the media, is surprising, given the absence of the same energy to critically assess the overall prudence of annual investment in the formal justice system.

If evaluations of community justice initiatives are used to question continued support, then at least these evaluations should:

a) compare what results the formal justice system would achieve with similar cases;
b) compare the cost as well as the benefits of processing cases through the formal justice process;
c) consider what resources, what training the community justice initiatives has been able to call upon in realizing its objectives;
d) assess the commitment, not in words, but in practical terms of formal agency partners to the process; and
e) take into account long term benefits and secondary impacts of the project.

9. Maintain Essential Justice Principles and Practices

There is inordinate flexibility within sentencing principles and practices (and within all related government agencies). This flexibility must be fully explored to accommodate community interests in forging new partnerships. However, there are limits to what can and what should be done.

Public Access to Circles

Community approval is a prerequisite for conducting a Community Circle, but not for a Court Circle. In both these Circles, anyone can attend.

To provide the privacy necessary for some victims, families and others to participate and deal with highly sensitive confidential matters, private sessions excluding the general public may be necessary. Healing Circles for offenders, or for victims or for both can precede a Circle. Healing Circles can exclude the general public and afford the privacy necessary to work through very personal issues.

A pre-hearing conference can help resolve procedural questions governing how issues of significant sensitivity will be handled before and during the Circle Hearing. In serious cases, timely Pre-hearing conferences can be invaluable.

In some Court Circles, full recording equipment is used. In others a small tape recorder may be used. While communities have adjusted to these devices, there is no doubt the presence of recording equipment does affect how some participate. As Chief Justice Bayda suggested in *R. v. Morin* (1995), 101 C.C.C. (3d) 124 @ 145 (Sask. C.A.), these recording devices are not always required. If the Justice of the Peace or Judge files all material as part of the record, provides either a written or recorded summary of the basis for the consensus and all reasons for sentencing, the legal requirements are satisfied. In cases where contested facts are addressed, resolution follows normal court processes.

Taking these steps offers a fair accommodation of the competing interests of the justice system in recording everything and the communities' interest in respecting confidentiality.[15]

Evidence

A Court Hearing can resolve any contested facts. Current sentencing practices, post- *R. v. Gardiner* [1982], 2 S.C.R. 368, have witnessed a necessary and constructive relaxation of rules surrounding the admissibility of evidence.

The moral commitment to be truthful that all participants make in the Circle, the practices surrounding the use of the feather, and the presence of family, friends and neighbours do as much or more to induce the truth as anything a courtroom oath can.

All other changes from the Court process – being seated in a Circle, using first names, relying on local Keepers to facilitate the process and other Circle practices – do not offend any evidentiary or procedural rules and are instrumental in advancing the sentencing objectives championed by the formal justice system.

Fundamental Principles

The flexibility of the sentencing process, coupled with shared objectives, enables the justice partners to participate without abrogating fundamental justice principles.

For the community justice partnerships to evolve, justice partners must be innovative in developing new processes that retain the essence of fundamental principles of justice. There is nothing sacred in existing justice practices or procedures. It is the integrity of the principles, not current practices and procedures, that must be retained. To the extent these practices and procedures can be altered without diminishing fundamental principles to accommodate the needs of communities – they should be.

In some cases, court and legislatures may need to lend a hand, but for the most part, the criminal law, as witnessed by its evolution, has enormous flexibility to adjust to changing circumstances and needs.

Summary of Part II

This Chapter assumes we are yet years away from the funding commitments necessary to competently diagnose the handling of crime in order to properly design community justice partnerships. Consequently the ideas in this chapter focus on what communities can do with little or no government support.

While there is widespread enthusiasm within government for community justice alternatives, there is as yet no government willing to invest adequate resources in designing and developing the infrastructure and training necessary to reap the full potential of community justice. Despite the demonstrated ability of community justice alternatives in many jurisdictions to perform much better at much less cost than formal justice systems, public funding continues to flow principally into formal justice systems. Consequently, the development of community justice alternatives depends upon individual initiatives, volunteers and the cobbling together of whatever resources can be cajoled, borrowed or donated from government and communities.

Initiating and maintaining a community justice process poses an enormous challenge. The challenge lies in creating a process that provides better results at lower transactional costs. It is a challenge both communities and justice professionals cannot afford to avoid.

Further, the challenge lies not just in introducing a new process, but also in dealing with resistance to change and in motivating people to use and support new processes.

The primary successes of community justice are not readily measurable. Their important contributions flow chiefly from secondary impacts that prevent crime, or avoid conflicts from evolving or exploding into crime. Serious crimes will still occur and, if the social conditions of communities do not improve, these crimes will continue to occur, even increase.

The persistence of serious crime, coupled with the important, but often intangible success of community justice, poses a dilemma for community justice. A similar dilemma confronts medical practitioners working in preventive medicine. Medical professionals involved in preventive medicine struggle vainly for appropriate funding, competing with colleagues with ready public support for their higher profile work in crisis treatment. So it will be with community justice. The preventive work of community justice, despite its valuable contribution to society, will not attract the same funding support from government as justice agencies responding to high-profile crime. Appropriate funding for community justice can only be achieved by appreciating the less tangible but crucial secondary impacts of community justice and by enlightening and informing the public about the short- and long-term benefits of community justice.

Part III

Acceptance into Circles

"They're all part of community - can't leave anyone behind - we must bring them all along with us as we heal - they belong to us and we belong to them." **(Jessie Scarf, Kwanlin Dun, 1992)**

Acceptance by Community

The offender, victim, court worker, Defence Counsel, Crown or anyone may propose a Circle. The community justice committee, or whatever body is established within the community to act on behalf of the community, must accept the case into a community Circle. No one except the community can authorize an offender to access a community Circle. For Court Circles, the court decides.

Admissibility Considerations

Offender's Input and Actions

Rarely are cases accepted into the Circle after a trial. The earlier an offender accepts responsibility and enters a guilty plea, the greater the prospects for acceptance into the Circle.

Acceptance into the Circle is not easy. Each community imposes standards for the offender to meet. All standards measure the offender's acceptance of responsibility, their genuine commitment to changing their life, and the sincerity of their remorse. In determining whether the offender meets the standards for admissibility, the Committee attaches more weight to what offender's do than to what they say.

Connection of Offender to Community

For a Community Circle substantial weight is accorded to the nature of the offender's connection to the community. In Court Circles, the community connection is irrelevant, but there must be significant support from the offenders' personal community (friends, family, co-workers).

Nature of Offence

The circumstances of the offender are more important than the nature of the offence. A person charged with minor offences may be accepted if the community believes the Circle provides an opportunity to address significant personal or family issues. For

example, a young girl was brought before the Circle for underage drinking because the community recognized the family and young girl needed help.

Serious offences require careful consideration before acceptance into the Circle process. Most communities believe if they do not tackle the serious offences, no significant changes will occur. While the remedies for more serious offences will be different and may include jail, the process used for acceptance is essentially the same.

Comment

Unlike Hollow Water where serious sexual offences are the primary focus of the Community Circle process, not all communities in the Yukon handle spousal or sexual assaults. These cases can be extremely difficult and impose onerous burdens upon volunteers. There is significant wisdom in Hollow Water's investment of several years in developing the requisite experience within the community, garnering community support, building up a network of essential resources and establishing effective victim support services before handling such difficult cases. However, some communities see no effective solutions in the formal justice system for these cases. Despite the difficulties posed by sexual and spousal offences, communities have assumed the challenge. These difficult cases call upon a viable partnership between community and professional resources to prevent further crimes and to provide the necessary healing resources for victims and offenders.

Views of Victim

While victims do not possess a veto, their views are very influential. Victim-support workers are essential to ensure that victims' interests are fully heard and understood by the justice committee and that victims can freely choose whether and how to participate. From the initial application to the Circle, the victim must be kept informed and supported throughout the process. Early and equal support for the victim is a must within a holistic healing process.

In all cases, the victim retains the same opportunities to participate that are available in court. The Circle does *not* force the victim to make a choice between the court process and the Circle. If the community decides to accept the offender into the Circle, the victim has three options:

a) participate in the Circle; or
b) participate solely through the formal court; or
c) participate in both a court and Circle process.

These options are made possible by hearing any representations the victims may wish to make in Court, and filing the transcript of the testimony or representations made in Court before the same judge in the Circle. Thus the victims do not lose any

opportunities to participate, but gain new avenues for their interests to be heard and considered.

As victims may not be ready to directly participate in a Circle, access to victim-offender reconciliation resources should be a part of the community justice process and available whenever victims wish to access these invaluable services.

Circles have greater flexibility to consider the interests of victims in setting dates for Circles. If a victim wishes to participate, the community justice committee has substantial latitude to postpone a final Circle Hearing until the victim is ready.

Views of Crown

Objections from the Crown are heard well before the date set for the Circle Hearing. Most Crown objections can be addressed by the community. A Court cannot impose a Circle upon a community but may reject an application for a Circle if the Crown or victim opposes.

Application Process

Each community has developed a different application process. As communities gain experience, the application process tends to become more elaborate. All application processes have retained the necessary flexibility to adjust to a wide range of community circumstances. While, initially, ad hoc groups emerged to represent the community, in most communities a more formal structure has emerged in the form of a community justice committee.

Community Justice Committee

To retain local responsibility, and to enable the community to be a full partner, the following characteristics of building and maintaining a community justice committee seem necessary:

- Community representatives should *not* be appointed by justice officials, but chosen by the community through whatever process the community decides.

- The committee composition should be balanced among age groups and gender, and include representatives from all sectors within the community. The richer the variety of community representatives, the stronger the committee will be (preferably including teachers, health officials, business, labour and church leaders). People who have been offenders and victims can be invaluable members.

    "We use most of the professionals as resource people to our committee. The members are people who have known the parties involved for years - maybe for their whole life. These are the people best suited to test the readiness of an offender." (Rose Couch, Kwanlin Dun Community Justice Manager, 1996)

Politicians must be informed and supportive but are not suitable members of a community justice committee. They can sit on the advisory committee. Community justice must be beyond political influence and remain driven by a broad diversity of representatives of all sectors in a community. The closer community justice remains to the “grassroots” of the community, the greater its prospects to be fair, balanced and focused on the merits and issues in each case.

- Decisions within justice committees should abide by the same consensus principles governing decisions within the Circle.

- While the main energy for the justice committee emanates from volunteers, sufficient funding must be available to provide a Community Justice Co-ordinator, Victim and Offender Support Workers, and to run an office that provides administrative support for the community justice committee.

  The workload of the community justice process will determine how many of the key community workers will need to be paid and whether they need to be part- or full-time employees of the community justice committee. To be an effective equal partner, the community must be adequately funded to participate. Funding arrangements must be sufficiently permanent to allow the community justice initiative to focus on its work and to evolve. Uncertainty over funding can severely undermine morale and preclude essential long-term planning.

- The justice committee must be constantly renewed by "new blood" – new volunteers.

- Local police, Crown, probation officers, court workers and local treatment professionals should be in regular contact with the committee. There are enormous advantages in local justice officials serving as members of the committee. All local justice officials have important inputs to the community decision whether to accept offenders into the Circle process.

In communities with a justice committee there are “usual procedures” in applying for acceptance into the Circle.

1. Written Applications

Offenders must fill out a form indicating their charges, who their community supporters are, the reasons for applying to Circle, and a brief outline of their goals and plans.

2. Offenders’ Responsibilities and Commitments

To be accepted into a Circle offenders must:

- accept full responsibility for the offences before the Circle;

- acknowledge hurt caused to others;
- be honest with their community;
- commit to healing and self care;
- demonstrate a serious commitment to accounting for their harm to others;
- be prepared to compensate victims and community;
- establish a balanced support group to assist them through all steps in the Circle process;
- meet as often as required with the local justice committee;
- develop a plan to take responsibility for the offence, reconcile with and compensate the victim, demonstrate appreciation for community assistance, and address their rehabilitative needs;
- identify a sponsor. (Some committees require the offender to identify a person to chair their support group. The committee may also ask the offender to acquire support from an Elder);
- Carry out all steps required by the support group or justice committee.

Comment

Panels of Elders selected by the justice committee can be invaluably integrated in many ways into community justice. Their wisdom, insight and credibility assist on many levels. Non-Aboriginal Elders, retired people, and other senior citizens can offer many of the same essential contributions to Court Circles or Community Circles dealing with non-Aboriginal offenders. The work of Circles in connecting or reconnecting offenders to families and communities also contributes to forging connections between generations, especially between Elders and youth.

The justice committee ensures the support group includes, in addition to family and friends, people who are stable, sober and reliable and others with skills and resources specifically needed for the offender's healing journey. The support group functions not just to "support" offenders, but also to ensure each offender accepts full responsibility for their actions and diligently carries out their commitments. The support group assists offenders to make significant connections with their family, friends, other constructive influences, and with their community.

By providing offenders at the outset with a clear outline of what is expected from them and of the steps in the process, justice committees ensure offenders have a better appreciation of what they face in the Circle process. Written applications, information sheets, and the highlighted page of key offender responsibilities that Kwanlin Dun uses immensely help to clarify what offenders must do.

Justice Committee Decision

The committee, in deciding whether to accept the offender's application, follows certain steps.

- Review the application.
- Consult with Elders.
- Meet with the offender, several times in most cases, and with the offender's support group.
- Assess the realistic objectives of the offender's proposed plan.
- Meet with the victims and their support group.
- Review the criminal record and any previous pre-sentence reports.
- Contact key reference sources about the offender and offence (police, family, friends of the offender, employers and anyone else who can provide vital information).
- Review the capabilities and suitability of the proposed support group.

The justice committee then has three options.

a) Reject the application.

The case continues within formal justice process. If no charges have been laid, or the case is not a criminal matter, no further action is taken.

b) Adjourn

The committee will seek additional information, or test the ability of offender and support group to walk the talk. Few cases are fully accepted from the outset. Adjourning to enable the offender to demonstrate commitment is a common practice.

c) Accept

If accepted, conditions will be imposed for the offender to follow in preparing for the Circle. A decision to accept the offender into the Circle will be reviewed if the offender fails to achieve the conditions imposed by the committee.

In accepting the offender to the Circle process, the justice committee has more decisions to make.

- **When**

The Circle hearing generally will not be set until the offender has had enough time to "walk the talk". In some cases, the committee may require the offender to complete several conditions, including substance-abuse residential treatment, or anger-management courses, before the Circle Hearing.[16] In other cases, the need to hold the Circle immediately, because of tensions within the community, may require an earlier hearing. Sometimes a Bail Circle can be held to address immediate concerns. Hearings can be delayed until a victim is ready to participate.

- **Who Participates**

While all Circles (except Healing or Talking Circles) and most justice committee meetings are open to the public, the justice committee makes a special effort to secure attendance of key people who can make valuable contributions to the process. Special efforts are made to encourage participation by victims, their supporters and families, offenders, their family and supporters, and others whose skills, connections, or resources can make specific contributions to the case.

- **Where, and in What Process or Forum Will the Case be Heard**

If a broad range of community options exists, the justice committee can match the needs of each case to the inherent capabilities of each community-based option. To maximize the use of community and justice resources, and to minimize unnecessary use of volunteer and professional resources, a community justice system should contain a broad range of options, from informal police warnings to formal court hearings, from community mediation to community input into court sentencing. (See Diagram 3 on page 43 for an example of the range of options).

A broad range of options enables the justice committee to decide which option best serves the particular needs of each case. Some options such as diversion require the consent of the police or Crown (more good reasons for involving them in the justice committee). Ideally, most communities will eventually be able to develop the following options within a community justice partnership.

- **Police Diversions**

Informal police warnings engage the police as a peacemaker to mediate, or resolve the issue and to warn participants of the legal consequences of their behaviour. This immediate response can remove the need for any further action.

A formal police caution, consisting of more elaborate steps to involve the families and others affected, can also resolve issues without further need for formal justice resources.

Both of these measures primarily require police who are trained in mediation or peacemaking and who are very familiar with, and known by the community.

- **Mediation**

Community Conflict Resolution Courses can develop capable mediators to mediate all or part of a case. In appropriate cases the mediation process may conclude with a private agreement, or with a proposal for consideration by a Circle, Justice of the Peace or judge. (A victim should be able to access a competent Victim-Offender Reconciliation Service at any time before or after a Circle.)

Comment

Mediation is also used after a Circle in order to resolve continuing tensions within the community between different groups affected by the crime. Long-standing feuds, especially family feuds, if not addressed, fester and continue to create conditions for crime. These mediations can be a crucial part of a follow-up plan.

- **Diversion**

For adults and youth, a Diversion Panel may be called upon to work out a settlement contract or to establish a proposal for the Circle.

Comment

Most diversions settle conflicts between offenders and victims without seriously addressing underlying issues. Their potential to redress underlying causes, or to significantly develop healing plans, is quite limited.

- **Talking or Healing Circles**

These Circles, carried out without justice officials (or at least without their participation in any formal capacity) can become the primary process within a community to:

a) handle all non-criminal matters; to
b) help prepare for more formal options; and to
c) follow up cases from more formal options (Talking Circles can be particularly appropriate for child-protection and family-based conflicts).

- **Family Conferences**

New Zealand Family Conferences, with the necessary adaptations for Canada, can offer a private and confidential means of resolving youth issues. Family Conferences require legislative changes, training, funding, and the dedication and realignment of existing staff positions to be as effective as they are in New Zealand. The Australian model operated by police is less relevant to the north where police transfer every three years. However, it is important to involve police as much as possible.

- **Community Peacemaking Circle**

These Circles, run by local Keepers working with a Justice of the Peace, without Crown or Defence Counsel, can be used for a wide range of cases. These Circles can be held quickly and are ideally suited for young offenders.

For more serious cases, a Community Circle can be used as a Bail Circle. In this capacity the Circle can employ family and community resources promptly to mitigate pressing problems and can ensure a timely intervention with professional resources.

Comment

A Bail Circle *has many immediate benefits and can significantly assist preparation for a final Circle hearing. A Bail Circle does not pre-empt any of the options of the justice committee. The offender may still be rejected from the Circle process.*

- **Community Court Peacemaking Circle**

These Circles, run by local Keepers working with a judge, include all justice officials including Crown and Defence Counsel. In many cases, Defence Counsel can be replaced by local court workers, or by the offenders support group. These Circles generally deal with serious charges beyond the jurisdiction of a Justice of the Peace.

- **Court Sentencing Circle**

Presided over by a judge, these Circles take place within the courtroom and generally involve “personal communities” as opposed to a geographically based community.

- **Court**

The justice committee may turn the offender over to either a Justice of the Peace court or other court at any time throughout the process. The formal courts constitute a vital back-up for the community process by assuming responsibility when the community feels it cannot cope or when the offender breaks promises to the community.

Summary - Part III

A wide range of alternatives to match the needs of each case is an essential feature of any successful community justice partnership. We squander too many scarce resources, and fail to resolve too many conflicts by placing too much reliance on one process to deal with a diverse range of problems within communities.

A broad range of community-based options backed up by a highly developed partnership with relevant government agencies provides a full-service response to conflict within communities. A full-service response allows appropriate use of each conflict resolution service. The partnership between communities and government agencies ensures the various services support and reinforce each other, and are

coordinated to effectively and efficiently use family, community and state resources. For example, the threat, or use of Court sanctions can revive Circle commitments, or provide the necessary ‘backbone” or formal sanctions to underline the seriousness of breaching commitments to the community.

As community experience with Circles grows, more attention is paid to the conditions and procedures governing acceptance into the Circle. Many communities, having accepted numerous difficult cases into the Circle found their limited resources severely strapped as they tried to contend with new cases while still scrambling to find resources to properly monitor and follow up previous cases. Accordingly, many community justice programs became stretched and the quality of their work deteriorated.

Until government funding and line agency cooperation is fully in place, community justice committees should consider what resources are committed to existing cases before taking on new cases.

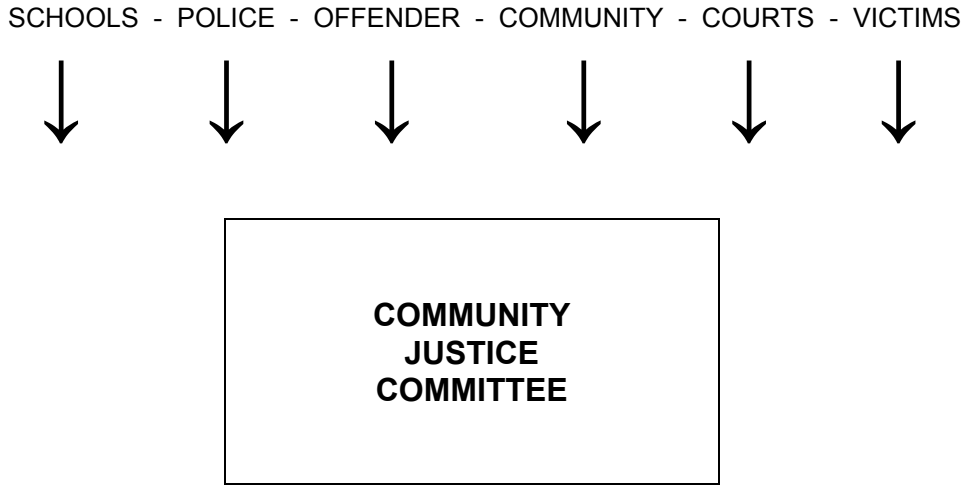
An offender must *earn* the privilege of being admitted into a Circle process. Unless communities take care at the outset to admit worthy cases, they will invite many to abuse their process and to misuse limited resources. Offenders who abuse community assistance, who disrespect volunteers, and who break their commitment to the Circle, frustrate and burn out volunteers, and place the reputation and existence of community justice at risk.

Consequently, there is much wisdom in the current practice of some communities in requiring applicants to “walk the talk” before final approval into the Circle is granted.

Circles are not easy on offenders. The difficult challenges confronting offenders in Circles cause many to consider very carefully their readiness for a Circle. Many offenders prefer Court. This is not a sign of the Circle’s failure – but of its success. Circles are for those ready to change, not for those hoping to avoid or reduce jail time. Many offenders find it too difficult to be heard, assessed and judged by their family, peers and community, to directly confront a victim or a Victim Support Group, to take responsibility to speak on their own behalf and, finally, to stay on the healing path set out in the Circle.

However, for those ready for a Circle, there are many willing to help, willing to offer support, willing to walk that “extra mile” with them.

Diagram 1 – JUSTICE COMMITTEE REFERRALS



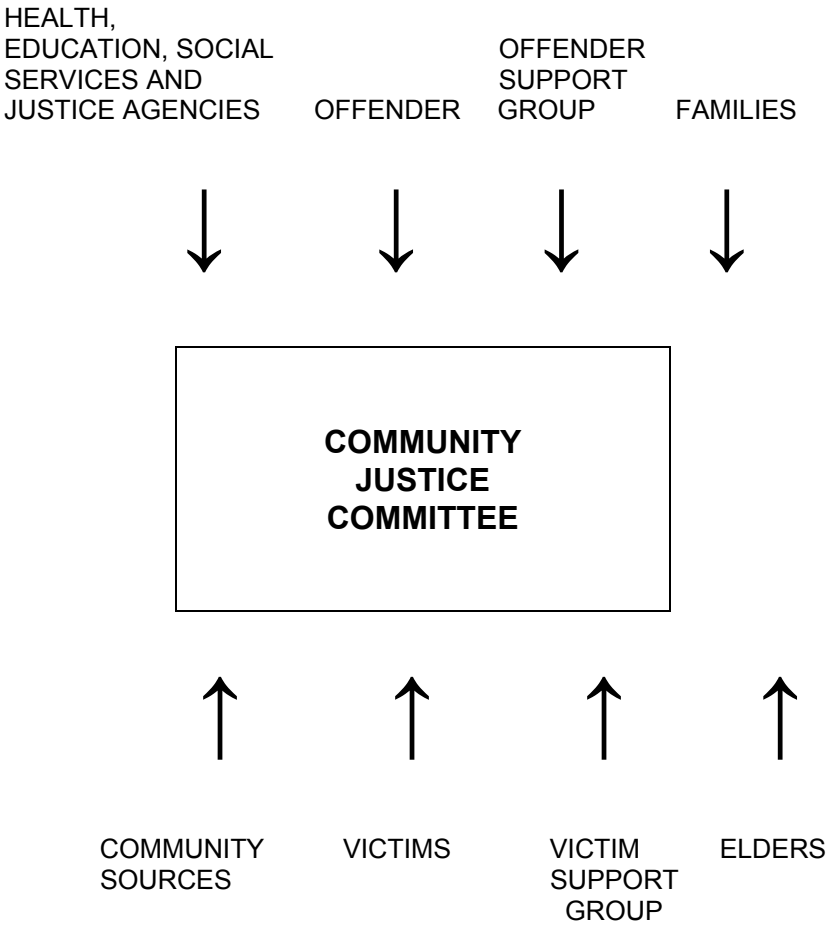
NOTE:

ANYONE CAN REFER A CONFLICT TO JUSTICE COMMITTEE

JUSTICE COMMITTEE CAN ASSIST IN

- **CRIMINAL, AND**
- **NON-CRIMINAL MATTERS**
- **PREVENTING CONFLICTS FROM BECOMING CRIMES**

Diagram 2 – JUSTICE COMMITTEE INPUTS



NOTE:

CIRCLE PROCESS PURSUES HOLISTIC SOLUTIONS. THUS

- **ALL RESOURCES IN COMMUNITY SHOULD BE AVAIALABLE AND CO-ORDINATED THROUGH COMMITTEE**
- **THE BROADER THE BASE OF INVOLVEMENT, THE MORE ENDURING, MORE APPROAPRIATE THE SOLUTION**

Diagram 3 – JUSTICE COMMITTEE OPTIONS

NOTE:

COMMUNITY JUSTICE COMMITTEE MUST HAVE HAVE A BROAD SPECTRUM OF OPTIONS TO *MATCH PROBLEMS WITH APPROPRIATE PROCESS*

SELECTING MOST APPROAPRIATE PROCESS PROFOUNDLY AFFECTS ACHIEVING:

- **"RIGHT RELATIONS"**
- **SUPPORT FOR SOLUTIONS**
- **SUCCESSFUL IMPLEMENTATION**
- **EFFICIENT USE OF RESOURCES**

JUSTICE OF THE PEACE COURT

SUPREME/ TERRITORIAL COURT

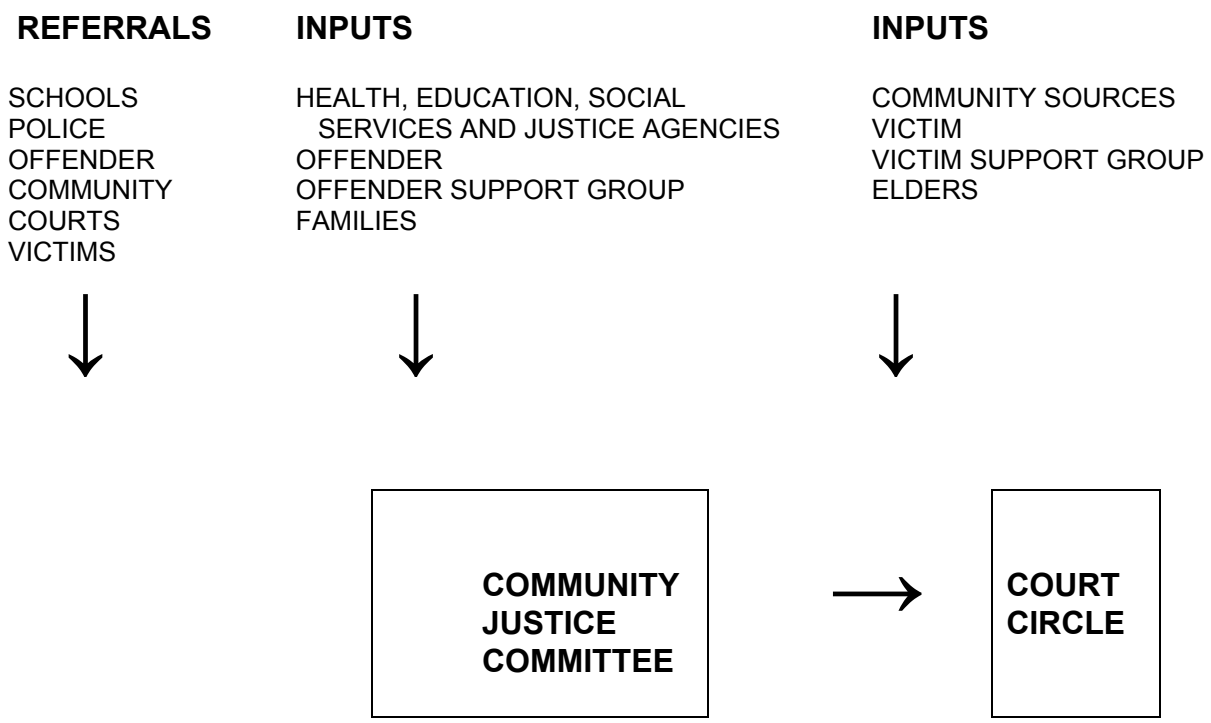
MEDIATION

DIVERSION TALKING CIRCLE FAMILY CONFERENCE

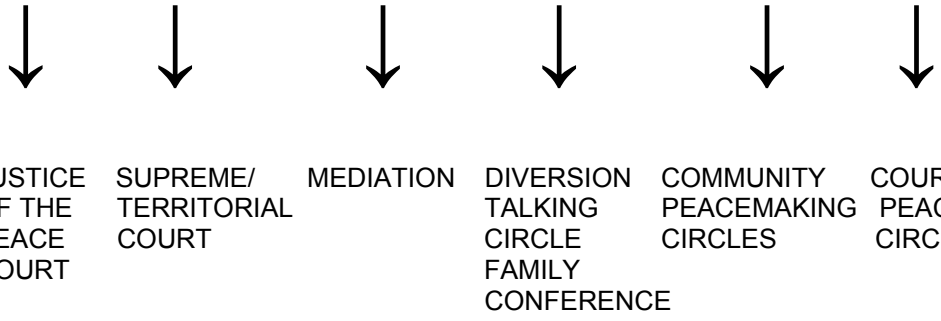
COMMUNITY PEACEMAKING CIRCLES

COURT PEACEMAKING CIRCLE

Diagram 4 – JUSTICE COMMITTEE PROCESS



SOLUTIONS



Part IV

Pre-Circle Preparation

"*Makes me feel good to be able to help others - makes me feel good to see others doing good*." (Jessie Scarf, Kwanlin Dun, 1993)

Importance of Pre-Circle Preparation

- Based upon experience to date, nothing better redresses concerns raised about Peacemaking Circles and renders Circles a success than thorough preparation.

- Coming into a Circle "cold", without proper preparation of the victim, offender or other relevant players, places far too much reliance, too much emphasis, on the hearing. This approach generates fear and anxiety about what might occur in the Circle. Assumptions prompted by fear in such emotionally charged circumstances can detrimentally affect the peacemaking and consensus-building potential of Circles.

- Preparation for Circles promotes a balanced, active participation by all affected interests and immeasurably improves outcomes.

- What happens at the hearing is significantly affected by what happens before the hearing. The more done before, the less needs to be done in the hearing, and the greater are the prospects for achieving real Progress. In Kwanlin Dun, where many community people participate in justice committee meetings, the value of pre-hearing preparation is appreciated and it is increasingly utilized.

In a consensus process to maximize the potential to transform individuals, build positive relationships and redress the underlying causes of conflict, many steps must be taken before all affected interests meet. A failure to take these steps reduces the Circle to a search for a settlement of differences. Settlements rarely change attitudes or behaviours, they merely impose compromises to address immediate tensions, and often fail to prevent similar conflicts in the future. The high rate of recidivism is, in part, an indication of how criminal courts in sentencing do not resolve underlying tensions and problems.

Community

Before the Circle Hearing the *justice committee* should take the following steps:

- notify the victim of an offender's acceptance into the Circle;
- provide support for a victim to participate in whatever manner the victim decides;
- assess the offender's plan and support group;
- circulate key information among participants;
- meet with both offender and victim groups; and
- monitor progress of the offender.

Comment

To carry out these responsibilities a justice committee often must work closely with various justice agencies, as well as with numerous other organizations (schools, churches, victims groups, local businesses, government, health officials, etc.). In all of these activities, to properly achieve their goals, a justice co-ordinator can be invaluable, perhaps essential. The co-ordinator reporting solely to the committee can make the partnership work, and significantly broaden the base of community participation. The co-ordinator can do many tasks currently assigned to professionals much more effectively. To marshal the vital energy and resources volunteers can contribute, the justice committee needs a justice co-ordinator who lives in and is intimately familiar with the community. Without a justice co-ordinator, the partnership will fail, or will survive to primarily pursue the objectives of formal justice agencies. Unquestionably, the advantages for both partners in a community-justice partnership flow from an emphasis on community objectives, not on formal justice objectives.

Offender

The progress made by the offender accepted into the community process is a primary determinant of continued community support, and significantly shapes the outcome of the Circle Hearing. The offender should:

- meet regularly as required with the justice committee and his/her support group;
- complete as much as possible of the support group plan;
- participate in any reconciliation plan approved by the victim;
- make restitution to the victim;
- prepare to speak on his/her behalf in the Circle;
- develop a proposal to give practical expression of appreciation for community support; and
- make all reports/records available for Circle participants.

Victim

Over the past hundred years, the criminal justice system has persisted in a tragic shift from a balanced focus on victims and offenders to focus attention and resources almost exclusively on offenders. The Circle, designed to treat equally the needs of offender and victim, aspires to correct this imbalance.

The victim's input profoundly contributes in numerous ways to the goals of the Circle. Consequently, every effort must be made to encourage and support the victim to participate. The justice committee must give prompt and equal attention to the victim's needs and interests. The justice committee must endeavor to assist in any way they can to restore all aspects of the victim's life harmed by the crime. Victims must feel their concerns are as pressing and important as the offenders'.

If the victim decides not to participate in the Circle, assistance and support are still necessary, and a victim's representative should be involved to ensure the victim's interests are known in the Circle. Preparation for a victim to participate should include:

- deciding if and how a victim may participate;
- establishing a victim support group;
- developing a plan for the victim;
- identifying people to attend the Circle with or on behalf of the victim; and only *if victim wishes to do so*,
- meeting with the offender; support group or with the offender; and
- preparing to speak in the Circle.

Within community justice initiatives a Victim Co-ordinator is as important as a Justice Co-ordinator, or Offender Co-ordinator. The criminal justice system is more inclined, more capable and more experienced in responding effectively to the needs and problems surrounding offenders. A victim support group can provide personal attention and support, but a victim co-ordinator, familiar with the machinations of the justice system, is needed to ensure all justice agencies and resources are plugged into and sensitive to the victim's need. Meaningful empowerment of the victim and a balanced response to the interests of victim and offender is often impossible without a victim co-ordinator from the community.[17]

Comment

The overall Circle process can assist in restoring a victim's self-esteem, dignity and well-being, and begin the process of healing and gaining closure on the damaging impact of crime. The Circle hearing can help, but not satisfy all the victim's needs. Thus all victim services, including victim/offender reconciliation programs and victim-focused services must be accessible before and after the Circle hearing.

Pre-Circle preparation offers the best opportunities to protect victims, to facilitate their full involvement and to ensure their participation does not jeopardize their safety. Victims must feel sufficiently safe to reveal facts only they know. Community, and in some cases professional resources, must be available to all victims throughout the Circle process to remove fears of repercussions and generally to foster their participation.

Comment

The involvement of justice officials, police, Crown, and Judge can profoundly help reduce potential abuses of power within a community process. A community process must build in sufficient safety checks against domination by powerful local voices. Circles involving vulnerable victims, such as women and children, should not be handled exclusively within communities until strong support groups for victims are in place, and trained Keepers are ready to maintain the integrity and safety of the Circle.

In some cases, forgiving the offender can often be a precondition of healing for both offender and victim. Forgiveness does not entail forgetting, nor treating the offence as trivial, nor acting as if the offence did not make a difference in their lives.

> *"Forgiveness is letting go of the power the offence and the offender have over a person. It means no longer letting the offence and offender dominate. Without this experience of forgiveness, without this closure, the wound festers, the violation takes over our consciousness, our lives. It, and the offender, are in control. Real forgiveness, then, is an act of empowerment and healing. It allows one to move from victim to survivor."* (Howard Zehr, Changing Lenses, Herald Press, Scottsdale, PA 1990, p. 47)

The Circle places responsibility upon offenders to accept in a full and public manner responsibility for their actions, to express their remorse, to apologize and to demonstrate their contrition in a practical manner. Pre-hearing preparation enables offenders to clearly portray their feelings in actions and words in a manner that assists victims in deciding if, how, and when to participate. Victims are more prone to become involved if pre-hearing preparation creates the conditions conducive to their participation. When victims are able and wish to participate, a community justice process can afford victims both the opportunity and support to move through forgiveness from victim to survivor.

Crown and Police

Currently, most Crown and police invest more time in preparing for trial than they do for a sentencing hearing. The pressing reasons for Crown and police to invest more time and effort in preparing for a Court Sentencing hearing apply even more to Circle Hearings.

To participate constructively in the circle, the Crown and police need to be fully aware of the circumstances and progress of the offender within the community justice process, and of the most recent views of the victim. Plugging into the pre-hearing process enables them to avoid being surprised by proposals for dispositions that vary dramatically from the usual sentencing tariff, and prepares them to make relevant contributions.

If the Crown's contribution to the Circle, even though opposed to some or all of the proposed plan, reflects a full understanding and appreciation of what has been done within the community justice process, their views will be respected within the Circle, and they will avoid being inadvertently disrespectful of community and offender efforts to make fundamental changes.

Crown and police contribute a very necessary, often very different perspective. If they are unaware of what has preceded the Circle, their perspective will not be appreciated by others. They will be viewed as unalterably focused on jail and insensitive to any other perspective. Prior to a Circle hearing, both police and Crown should take the following steps.

- inform the justice committee of their interests or concerns;
- provide all relevant information to the justice committee.[18]
- participate in community justice committee meetings that assess the offender's initial and continuing suitability;
- review and comment upon plans and progress reports from the community justice committee, from victim and offender support groups; and
- contact the victim and victim support group to ascertain the victim's interests and determine what assistance is required.

Comment

As in the New Zealand Family Conference process, designating a local police officer to regularly represent police interests immeasurably improves the working relationship between police and others within a community justice partnership. In this way, the police become an integral part of the community process and not merely an outsider with standing to be heard. Including in the Circle the arresting or investigating officer can also reduce potential for internal differences within the police force and include another valuable perspective.

Defence Counsel and Court Workers

Court workers or Defence Counsel before a Circle Hearing should:

- provide legal advice to an offender;
- inform the offender of the Circle process, the nature of participation and responsibilities expected of the offender, and potential advantages and disadvantages of the Circle process;
- assist the offender in developing a balanced support group;
- help an offender prepare for the Circle hearing and develop a plan to change their life/his life, to demonstrate acceptance of full responsibility to compensate the victim and community.
- assist offender in converting intentions to change into action; and
- prepare the offender to participate directly in the Circle Hearing.

Comment

There are many tasks within a community justice process that local people can do more economically, more effectively than professionals, or can significantly enhance the work of professionals. For example, in all Peacemaking and Sentencing Circles, local court workers, in some cases, can be much more effective in assisting offenders than Defence Counsel. Local Court workers can draw on their knowledge of the community, of the offender's family and of the offender's needs to pull together a comprehensive plan. Defence Counsel are not trained, not experienced, nor often very amenable to doing the work required to seek out and engage resources from the community to build a viable "wellness" or sentencing plan. Court workers trained and properly paid as paralegals, can work with or replace Defence Counsel in most cases when the offender has been fully advised of his legal rights at the outset.

From the police to the judge, every position needs to be examined to determine how that role can be taken over, or supplemented by local people, or how local people can partner with professionals in delivering justice services. Localizing responsibilities can significantly decrease costs, improve the quality and success of justice services, and most important, assist in developing the skills necessary to improve self-reliance within communities.

Community Justice Coordinator

Prior to the Circle, a Community Justice Co-ordinator should:

- advise an offender and victim how to access community justice options;
- provide help to offenders, victims and others in accessing community justice resources;

- gather information from victims, offenders, police and others necessary for justice committee decisions; and
- carry out tasks assigned by the justice committee in preparing the case for a Circle Hearing.

Comment

The demands on justice Co-ordinators will vary from case to case. Their ability to carry out competently the requests of the justice committee will determine the breadth of community and formal justice agency support and can profoundly influence the results in each case. The evolution of the community justice process significantly depends on the skill and dedication of the justice Co-ordinator. The untapped enormous potential within each community and within volunteers to make a difference cannot be realized without a competent, dedicated justice Co-ordinator. The primary prerequisites for this vital role are local knowledge, listening skills, inter-personal skills, mediation training, a balanced perspective, and a widespread community reputation for integrity and confidentiality. Advanced formal education is not essential. An adequate remuneration package that reflects the importance of their work, and of their responsibilities is essential.

Judge or Justice of the Peace

Judges or Justices of the Peace should, prior to a hearing:

- develop familiarity with the community's Circle procedures and guidelines;
- become familiar with the process followed by "Keepers" and appreciate the part Keepers expect them to play;
- review reports from justice officials, justice committee and both support groups;
- ascertain from Keepers of the Circle the order of cases to be called;
- decide if the proceedings must be recorded; and
- hold a Pre-Circle Conference in any particularly difficult or serious case.

Comment

Pre-Circle Conferences are especially valuable if:

- *any of the professionals involved are new or unfamiliar with the Circle process;*
- *there is a confidential report containing information that may embarrass third parties or that would ordinarily be the subject of an application to protect the information from publication;*
- *the case raises especially difficult or sensitive issues that need to be clearly addressed prior to the Circle Hearing; and if*

- *a court decides to hold a Circle despite Crown or victim objections. Pre-hearing sessions can ensure steps are taken to accommodate the interests of the victim and Crown as much as possible.*

Keepers of the Circle

Community Peacemaking Circles are not run by Judges but by Keepers. Judges or Justices of the Peace participate as members of the Circle and handle the legal aspects of the Circle. They ensure the facts warrant a plea of guilty, manage the exhibits, explain the scope and operation of any legal tools used in sentencing and pull together the Circle plan into a legal sentence or, in the absence of a consensus, impose a sentence. Keepers will call upon Judges or Justices of the Peace to provide the specific legal steps required to process the case through the Circle.

Keepers function much like neutral facilitators or mediators in multi-party disputes. They help participants conduct very difficult conversations in a constructive manner. Keepers, appointed by the justice committee, are local residents with training and experience in mediation, peacemaking and consensus-building.

Keepers begin creating the foundation for a successful and balanced process before the Hearing begins. In preparation for the Circle the Keepers will review all available information about cases before the Circle (the facts of the offence and offender, the offender's support group plan, the victim's statement, assessments, reports and other materials that may be used in the Circle Hearing). They also will meet with the justice co-ordinator to ensure:

- information from justice agencies, justice committees and support groups has been exchanged and is available for public access;

- support workers for victims and offenders are ready for the hearing;

- all key participants have been contacted to ensure their presence.

Comment

Until the Keepers are sufficiently experienced with the Circle process, and until the community has sufficient knowledge and experience with Circle practices, private sessions with only the Keepers and either victims or offenders should be used only by keepers who are experienced mediators. Certainly, one of the many advantages of local Keepers over Judges running the process is the ability of Keepers to employ private sessions in assisting all parties to reach a consensus, or to work through difficulties that arise in the emotionally charged circumstances of a Circle Hearing.

The justice committee can propose a separate Talking or Healing Circle for the offender and victim prior to the Peacemaking or Sentencing Circle.

These Circles can immediately address outstanding issues, identify problems and immeasurably assist victims, offenders, and their respective support groups to prepare for the larger Circle involving all participants. Keepers can facilitate these prior Healing or Talking Circles. Unlike private sessions with just the Keepers, these Healing/Talking Circles involve all parties with common interests.

Among their other preparations, the Keepers will:

- arrange the room for the Circle hearing;
- bring the "talking" feather, stick or stone;
- welcome and seat Elders;
- remove anyone whose state of impairment or attitude reveals disrespect for the Circle;
- introduce themselves to strangers and make strangers welcome;
- answer any questions about process; and
- select someone to say opening prayers.

See Part V for a more detailed discussion of the importance of Keepers.

Advantages of Pre-Circle Hearing Preparation

Pre-hearing preparation immensely assists in making the Circle Hearing more than just a different way of constructing a sentence, more than just a unique problem-solving approach. Preparation for Circles enhances the capacity of the process to make transformative changes through fostering better relationships, promoting moral growth, and advancing the well-being of families and communities.[19]

Preparatory work improves the ability of the Circle to empower all participants to find and creatively utilize common ground in resolving competing interests.

Many advantages of pre-hearing preparation are intangible and take on varying degrees of importance in each case. The obvious identifiable advantages are:

1. Empowering Victims

Pre-hearing preparation that demonstrates community concern for victims' interests, creates a safe, supportive process for their participation, and provides victims with a full unqualified ability to choose without pressure if and how they will participate, promotes and enhances their involvement. Without proper preparation victims are unlikely to participate, or if they do participate, their participation is limited. Pre-hearing preparation that engages, informs and supports the victim from the outset benefits everyone.

Not all victims can or will be ready to participate. If they decide not to participate, every effort must be made to include their input and to ensure they are informed of each development in the process. Knowing what the offender has done to change his/her life,

to accept full responsibility, to demonstrate remorse, all of this information is not only necessary to enable the victim to make an informed contribution, but is equally necessary to assist a victim in his/her healing journey.

Establishing victim panels can be immensely helpful in providing the basis for victims to participate, and to include the essential victim perspective throughout all stages of the process. A group of victims of similar crimes can make the pain caused by crime graphically, poignantly real for offenders.

Without the victim's perspectives, the Circle process can fail to make offenders fully cognizant of the horror and pain they wreak on the lives of others. It is this realization that often is pivotal in changing offenders, in cutting through their denial, and in fostering an enduring commitment to change. The pain and suffering victims reveal in the Circle generates among friends and family of the offender a more accurate perception of the seriousness of an offender's conduct and enables them to clearly appreciate the help and treatment an offender may require.

2. Enabling Offenders to Assume Responsibility

The pressure of a trial or sentencing concentrates attention on legal facts, legal consequences, legal strategies and encourages offenders to define their problems in legal terms. This concentration on "law" induces offenders to seek legal solutions for personal difficulties. Further, the justice system encourages, often requires, offenders to do little and to take little active responsibility for their fate. Offenders invest lawyers with most of the responsibility to find and shape a legal solution.

In not so subtle ways, the offender learns to appreciate that silence about the truth, or even distorting the truth can assist in securing the most advantageous *legal* result. Offenders often leave the justice system talking about the brilliance or incompetence of their lawyers, or of the stupidity, insensitivity or charity of the judge, rarely remorseful about their actions, or genuinely committed to life changing healing plans. The court process and jails enable many offenders to escape the pain their actions impose on others.

> *"Court was just lawyers and judges. Tuning out – was my way of getting through it – In jail we just talk about what we'd do when we got out - not about what we did to get in – But I know after the Healing Circle they had for me that the Circle was no place to tune out – After the Healing Circle I got the message - got to be ready for the Circle 'cos (the victim) - all his family would be there - this time I'd be listening and talking"…* (Kwanlin Dun, June 1993)

Pre-preparation alerts offenders, especially repeat offenders, to the dramatic changes from a Court process. In the Circle process, offenders must take responsibility for finding and developing solutions, and for speaking on their own behalf. Preparing offenders to speak in the Circle is crucial. Hearing from Defence Counsel or court workers what an offender feels, how deeply remorseful they are or how earnestly they

wish to make reparations or change their life can never be as convincing as the same words directly from the offender. Accepting responsibility, apologizing, asking for forgiveness, making a commitment to change and asking for help – these are all deeply personal steps, steps that cannot be performed by someone else without diminishing the offender's credibility, without losing the empathy and acceptance of others.

Offenders must be prepared to be assessed in the Circle by people who have known them for years, and have their lives watched and judged by the people who mean the most to them. Not a stranger adorned in robes sitting aloof on a bench, but their families, peers, their community will take the measure of their honesty, their commitment to change. The ultimate community sanction for failure will be more severe and last much longer than most legal penalties. The disappointment and disapproval of the most important people in their lives will be more painful, more devastating than most penalties any Court can impose.

While packaged as a legal solution, the sentence or the "wellness" plan targets the special needs of the offender. Their life, their future is placed in their hands. Adjusting to all these changes, and taking on the new responsibility Circles impose, requires the offender to be fully engaged in all aspects of pre-hearing preparation.

Most Circles deal with offenders with long criminal records. Changing the perspective of someone who has become fully acclimatized to the Court environment takes time and extensive support. Most of the pre-Circle preparatory steps are critical for offenders to make the attitudinal changes necessary in shifting from a Court to a community process. Without adequate preparation the Circle, for offenders, can be reduced to a Court with a unique seating arrangement. Pre-Circle preparation can make the difference between an offender abusing the Circle and using the vital chance a Circle can provide.

3. Improving Access to Support Services

Pre-hearing preparation enables the community to provide more support, sooner. Timely access to support and treatment can profoundly improve the prospects for achieving "real differences", and for healing the injuries of crime. Timely intervention is especially important in offences within families, and in responding to offences by young people.

4. Raising Comfort Levels of Participants

During pre-hearing preparation, all parties gain more familiarity with the process, with what is expected of them and with the expectations of others. Support groups can significantly raise the comfort level of victims and offenders. Preparing them to participate, assuring them of their presence and support in the Circle, and helping them access any treatment or other resources they need, contributes to easing the tensions victims and offenders experience in living through the processing of their case. A Circle *can* provide a more positive experience than Court for all participants.

5. Enriching Information

Pre-hearing preparation enriches the quality and quantity of information available to participants in Circle Hearings *before the hearing*. The earlier information is available, the less likely that parties will form hardened positions. Little or no information fosters erroneous assumptions. These assumptions generally conjure worst-case scenarios, prompting courses of action that preclude involvement of key people, hinder development of optimal solutions for all participants, and thereby miss opportunities to make “real differences”. A full exchange of information during pre-hearing preparation can influence several matters.

- *Whether some parties will participate*: Victims and other key resource people, if not fully informed, often decide not to participate in the Circle. Their decision to stay out of the process can be based on dated or wrong information about what offenders are feeling and doing about their crimes.

- *What interests parties will pursue*: Absent full information, participants construct positions that can undermine their best interests. Before the Circle hearing, without full information, attitudes will harden as parties develop and accumulate arguments to advance their initial positions.

- *Whether parties can change their perceptions, attitudes*: Deeply entrenched positions cannot readily change. Once positions are ardently staked out in the Circle Hearing, the ability to change is further complicated by requiring the development of options that include “face saving” opportunities for participants to make significant public shifts in their positions. The courage and honesty of many to openly make significant changes in the Circle is astounding. However, there is enough emotional intensity, enough serious work to do, and enough challenge in Circle hearings without unnecessarily creating more by not fully developing and exchanging information *before* the hearing.

6. Improving Circle Hearings

Preparation reduces the time Circle Hearings can take, by vastly improving the quality of information, by reducing the surprises participants may encounter, by building credibility around what the offender and their support group can achieve. Without adequate preparation, Circles can last for more than three hours. The emotional and physical drain of such long hearings on all participants, especially upon Elders, is far too taxing.

7. Extending Base of Community Participation

Yukon Peacemaking Circles experiences suggest that the broader the base of participation, the higher the likelihood of success. If support for the offender comes from a mix of family, friends and others in the community, the support group's ability to persevere, to work through the hardships encountered on a healing journey is significantly enhanced.[20]

Pre-hearing steps allow the justice committee and support groups to identify and involve key people. The information shared during the preparatory stage can remove barriers to participating for some, and induce others to participate.

8. Changing Perceptions of Justice Officials

Police

Police inputs are as important to the community perspective of the crime and offender as community inputs are to the police perspective. Pre-hearing preparation enables the police to make significant contributions on many levels. Conversely, the police gain, through involvement in pre-hearing preparation, a better appreciation of offenders, of the underlying causes of the crime, of the "real" prospects for change and of what risks the offenders pose to others. Equally important, police gain a better appreciation of the victims' needs, interests, and what they expect to be done. Armed with a more comprehensive understanding of the crime, of the offender, of the victim, and of the extent and reliability of community resources, police are significantly better informed to make constructive contributions in both the pre-hearing process and in the hearing. Consequently, they are often received as warmly as they should be into the community.

> *"I am happy to see you here (in the Circle). We welcome you and the other police to be a part of what we are doing. It is a good thing to work together - Lord knows we've not done much good working against each other. I know about that, eh? But that is in the past - what we got going here is something to help all of us - help you too - 'cause we know you have a tough job. Helps us - certainly helps me to see the person behind the uniform - does my heart good to see you do care for these people - that you are not just interested in arresting and putting people in jail, eh? Makes a big difference how we welcome you here to this Circle - to our community. Thank you truly for being here.* (Harold Gatensby, Keeper of Circle - Carcross 1993)

Without participating in pre-hearing preparation, police can be seen as a single interest participant - focused solely on pursuing a punitive sanction. They enter the Circle a stranger to most. Powerful strangers in a Circle introduce tension, a tension that invites adversarial exchanges and undermines the overall level of trust necessary for creative, co-operative problem solving.

Pre-hearing preparation offers unique opportunities for police and communities to appreciate the valuable contributions each can bring to a community justice partnership.

Exposure on a personal level during informal exchanges woven into shared tasks in pre-hearing preparations fosters mutual respect and trust. This foundation of trust and respect is essential to improve the perceptions police and communities have about the respective contributions each can make.

*Crown * (The Prosecutor)*

For prosecutors who do not live in the community, who are relative strangers to the parties involved, pre-hearing preparation is the only meaningful opportunity to acquire information about the people, plans and objectives flowing from the community into the Circle. Absent engagement in pre-hearing preparation, the prosecutor enters into the Circle “cold”, thereby making it difficult to gain the common ground, trust and confidence that are prerequisites for effective participation in a consensus-building process with 20 to 30 others over a two-to-three-hour hearing. The prosecutor, entering the Circle as a relative “stranger” can hinder open, frank discussion.

* Note – In Canada prosecutors are referred to as "Crown Counsel" or "Crown"

Engaging the Prosecutor in pre-hearing preparatory steps can constructively change their perceptions (and practices) as well as the community’s perception of them.

In many Circles, Prosecutors and police have played a pivotal role. Prosecutors and police are best suited to rectify any imbalance in the Circle, an imbalance that overlooks the seriousness of the crime, fails to properly account for community safety, or to reflect adequately on the injuries and damages to victims. When a Prosecutor has been fully apprised of pre-Circle preparations, has invested time in assessing all the circumstances and has spoken to people on all sides directly affected, the Prosecutor’s input has been tremendously constructive. Participating in this manner, their inputs are respected and appreciated by the community, irrespective of whether the views support or oppose the community perspective.

In all Circles, even when the Prosecutors are complete strangers to the community, they are treated as an equal member of the Circle. If community justice partnerships are to reach their full potential, Prosecutors and police must be and feel they are an essential part of a community justice process. Being an essential part of the community justice process requires involvement in pre-Circle preparation.

Probation Officers

While Circles generally can function without a pre-sentence report, probation officers can make critical contributions to the process, especially if they are involved from the outset, during all preparation stages. The most important work of a probation officer begins during the preparation stage. During this time, a probation officer can assist the offender’s support group by:

- identifying key resources needed in the healing plan;

- reviewing the factors that helped or hindered offenders in the past in completing probation conditions; and
- providing an objective perspective on the feasibility of the offender's objectives.

The probation officer can assist the Circle by:

- providing an assessment of changes in the offender; and
- adding information about the offender that may not come from Circle participants.

In all cases, a probation officer's participation in pre-Circle preparations enhances their contributions in the Circle hearing and enables them to be an integral part in carrying out the plan after the Circle.

9. Clarifies Best Alternative

Whether the formal justice process, a community justice alternative, or some combination of both serves the best interests of all participants in each case will depend upon many factors. There is as much to be lost in processing the wrong cases through community justice options as in processing cases through the formal justice process that could be better served by a community process. Comprehensive pre-hearing preparation can invaluably assist in correctly choosing the most appropriate process.

Investment in pre-hearing measures increases the use of informal processes such as mediation, diversion and Talking Circles. The investment in preparation is recouped by minimizing unnecessary reliance on expensive, formal systems.

Preparatory steps can reduce reliance upon formal justice resources by exposing potential for change in offenders that is not readily apparent, even to an "experienced" eye.

Equally important, pre-hearing preparation can expose a lack of genuine potential for making "real differences", and thereby avoid a misuse of community options. Often pre-hearing preparation is the only means of clarifying what the Circle can offer, the only means for participants to make an informed choice of which process best serves their interests.

10. Increasing Use of Community Justice Alternatives

Pre-hearing preparation, by enhancing the following attributes of community justice, makes community-based options more attractive to all affected interests (offenders, victims, family, police, Judges and the community). Pre-hearing preparation:

- improves sharing of information among all participants;
- provides "hard" evidence of timely concrete steps by the offender towards rehabilitation and restitution;
- initiates timely support for victims;

- engages both the family and community in a meaningful manner; and
- removes misconceptions arising from misinformation or a lack of information.

Effective pre-hearing measures enable cases to be diverted from the Circle process to Diversion, to Talking or Healing Circles, or to Mediation, and enables many cases to come to Circle Hearings simply for approval of, or amendments to plans well underway. The preparation process by generating agreement among all affected interests significantly reduces reliance on formal justice resources. The more comprehensive the preparation, the greater the influence of and reliance upon the community and family.

Working together during pre-hearing preparation increases the trust, understanding, mutual respect and co-operation between justice officials and the community. Everyone benefits from vastly improved relationships among all participants. It is a direct consequence of these improved personal relationships as much as any unique institutional arrangement that there is greater reliance upon informal options and less dependence upon formal justice resources. Respect for what communities can do, coupled with a new trust in the skills and capacities of individuals within the community, induces justice officials to exercise their discretionary powers to empower a community to take responsibility. Justice officials, by being engaged from the outset, know more, make better decisions, and are more likely to be infected by the enthusiasm of what good things can be accomplished. Left out of the process until the hearing, justice officials retain an outsider's scepticism of what can go wrong, and opt for what they know best; formal justice processes.

Summary - Part IV

Too often, the pressure to "get on with it", to move quickly to a sentencing hearing causes many of the critical preparatory steps to be ignored or superficially addressed. Many erroneously believe that by bringing everyone together the problems can be resolved.

The hearing is important – but if preparation for the hearing is not accorded equal importance, the hearing will not succeed in achieving its principal objectives.

The principal objectives of the Circle process are not simply to impose a sentence, or to merely allow more voices to speak in constructing a sentence. The principal objectives of a Circle process are to:

- identify and redress the underlying causes of offending behaviour, of the conflict;
- identify measures to prevent similar crimes or conflicts;
- construct holistic healing plans for the victim and offender;
- build understanding, respect and empathy for others;
- construct the foundation for better relationships among the parties, within the community;
- probe and promote individual and community values;

- empower individuals, families to take more responsibility over their issues and in decisions affecting their community;
- connect offenders to positive influences, to their families and to their community; and
- construct durable solutions.

The formal justice system objectives – punishment, deterrence, retribution, rehabilitation and prevention – are encompassed and advanced within the principal objectives of the Circle process. The Circle process aspires to do more. To accomplish that, great attention must be paid to pre-hearing preparation.

In pursuing all of these objectives, the Circle process approaches conflict as an opportunity to build stronger families, stronger communities and to teach participants how to respond in a positive, constructive manner to conflict.

All of these objectives will not be realized in each case. In many cases, only the initial seeds of these objectives may be planted. However, to move the process in the direction of these objectives and to advance these objectives, the importance of preparation for a Circle hearing must be recognized and appropriate time and resources dedicated to fully carry out all preparatory steps.

Unlike the court, where primary attention is focused on the court hearing, which is regarded as the main event, in a Circle process there are four equal events: acceptance into the Circle process; preparation for the Circle hearing; the Circle Hearing; and implementing the Circle plan. All of these "events" must be treated with equal importance. A failure to do so will jeopardize the ability of the Circle process to work. The Circle process is a process, not just a hearing.

> *"All of the teachings of Circle must be practiced throughout the process - must be shared and understood to make the Circle a safe place for all to come."* (Gary Smarch, Kwanlin Dun, 1994)

Part V

Circle Hearing

"Went to Court many times - always went in angry - went out angry - hated everyone in there - including the Judge. Didn't understand, didn't really care - taught me they didn't care - made me think why should I care - can see from Circle something very different happening - going in positive - coming out positive - knowing that people care makes me care." **(John Edzerza, March 1996)**

Community Peacemaking Circles

In each Community Circle, the process before, during and after a Circle Hearing will be unique, and will be constantly shaped by experience within that community. The description of a Circle Hearing process in this part is patterned on the common features of a Community Peacemaking Court Circle which involves a Judge, Crown, sometimes a Defence Counsel as well as all community participants. A Community Peacemaking Circle involving a Justice of the Peace, local police officer, Court worker and members of the community functions in much the same way.

Logistics of Circles

Place

Community Circles should be held in a room not associated in the public mind with "the Court". In each community, the community must choose the place for a Circle Hearing. They know the importance of being comfortable, of being on "one's own turf". Whatever place is chosen, it should be comfortable to the offender *and* victim.

Physical Setting

The arrangement of chairs in a Circle, without tables, goes a long way to creating the impression and the fact that all participants are equal and share the responsibility to resolve issues raised in the Circle. While impossible to elaborate in this paper, many small details of the physical setting are important. For instance, something as innocuous as sharing the task of setting up and taking down the chairs in the Circle contributes a feeling of informality and a sense of shared responsibility among all participants.

Time

Circles should be held at a time that maximizes the ability of the community to participate. Evening sessions or sessions beginning at 4:00 p.m. impose the least interference with the workday of community participants.

Circle hearings should not exceed three hours. Adjourning to another time to complete the hearing provides a much better alternative to pressing beyond a three-hour hearing.

Comment

In the Yukon, before communities invested adequate resources into preparation and when three or four cases were set down for the same hearing, the Circles took over three hours and sometimes went on for six hours. Lengthy hearings exhaust all participants and undermine their enthusiasm to participate in other Circles. The quality of input severely deteriorates after two or three hours.

No more than one new case should be heard at each hearing. The emotional energy demanded by any case leaves little capacity for participants to effectively participate at the same hearing in a second case. However, a review of a previous case can also be heard. The review demonstrates to participants in the new case what happens when an offender succeeds or fails in meeting commitments to the Circle.

Notice

To remove any suggestion of secrecy and to keep the community aware of Circles, the cases to be heard at each Circle should be posted in a place readily accessible to the public. Equally, an extensive distribution list of relevant public and private organizations should be maintained for mailing out notices of the schedule for Circle hearings. Notices can effectively inform the community that Circles are open for all to participate, as well as ensure people with an interest in a specific case are prompted to attend.

Participants

Special efforts must be made to ensure key participants attend. A timely call by the justice co-ordinator can immensely assist in securing the attendance of key participants and can reveal why someone may not attend. Often reasons for not attending are based upon misinformation.

Comment

The effectiveness of the Circle process is directly related to the number and diversity of people participating in all phases of the Circle process. Everyone who desires to attend the hearing should be encouraged to participate in the preparatory stages, at least to be briefed by others who

are intimately involved or to read reports and other written information prepared for the hearing.

Seating

Chairs should be arranged in a circle. If proper respect is shown for the Circle, everyone will be on time. The circle of chairs should be as small as possible to accommodate everyone present. No more than a few empty chairs should be left in the Circle for latecomers.

Some Keepers will designate specifically where the main parties will sit in the circle. Other Keepers will allow participants to sit wherever they wish. The Keepers either sit across from each other or beside each other in the Circle. Each Circle poses unique challenges. Keepers will assess if their task to facilitate difficult discussions is best served by sitting together or apart within the Circle. Both approaches have advantages and disadvantages.

Support persons for the victim and offender may be encouraged by Keepers to mix around the Circle. Victims and offenders sit apart and are seated beside one of their support workers. When defence counsels are involved, they sit beside the offender.

Late-comers can be seated outside the Circle, waiting to be asked by the Keepers to join the Circle.

Comment

In some communities, the Circle Hearing consists of two Circles. An inner Circle comprises all persons directly involved; justice officials, offender and his/her support group, victim and his/her support group and Keepers. The outer Circle includes those who primarily wish to observe. Those in the outer Circle may also speak, but do not participate directly in passing the feather around the Circle. Primary participation is concentrated within the inner Circle. These arrangements accommodate large Circles and Keepers have a better opportunity to facilitate and focus discussions. The inner, outer Circle arrangement has advantages and disadvantages that each community ought to explore.

Maintaining Respect for Circle

Keepers, or someone else chosen by the Keepers will ensure no-one enters who is intoxicated, and will ask those who demonstrate disrespect for the Circle to leave.

Consensus-Building Features of a Circle

Many different characteristics of a Circle contribute to creating a positive environment for people to share highly sensitive, emotional issues. This constructive environment derives from many elements of the Circle process. Sitting in a circle, treating all participants as equals, using first names and not titles, relying upon Keepers trained as facilitators, the overriding guidelines and teachings of the Circle, focusing on interests, relying upon a consensus approach and involving all participants in designing and running the process – all these factors and more foster a sense of sharing and a creative problem-solving environment within the Circle. As Circles evolve, their as-yet-untapped potential will be discovered, developed and shared.

This bare-bones survey of the Circle merely lays out a brief description of the stages or mechanics of the process. However, the simple mechanics of the Circle cannot be understood without introducing at least two features that significantly influence the dynamics of the process. By delving a little deeper into the use of the feather, and the role of Keepers, a better understanding of the mechanics of a Circle hearing may be generated.

The Feather, the Rock, the Talking Stick

In the Yukon, a talking stick, a Bible, and a rock have been used, but primarily an eagle feather is used, to facilitate and share speaking time in the Circle. Whether it is a rock, a feather, or a talking stick depends upon what object has particular meaning to the community using it. There are some primary guidelines governing its use, which profoundly influence Circle discussions.

- The feather always moves clockwise around the Circle.
- One cannot speak unless holding the feather, except with the permission of the Keeper (see below).
- When passed to someone, the feather imposes no obligation to speak. One can pass the feather without speaking.

When holding the feather, one must:

- speak from the heart, honestly, openly;
- speak with respect for others;
- respect the right of others to speak by not speaking at length; and
- speak to the issues in the Circle.

Once the feather has circulated around the circle and comes back to the Keeper, the Keeper has several options. The Keeper may:

- summarize the contributions of the Circle and raise potential questions or issues to address before passing the feather around the Circle again;

- hold the feather and, after summarizing discussions, open the Circle for anyone to speak;
- hold the feather and call upon specific participants to clarify or respond to particular issues; or
- pass the feather to someone else to facilitate an open Circle discussion on a key issue.

What option or options the Keeper employs will depend on the customs within the community, upon the nature of issues raised and upon how the Keeper believes the objectives of the Circle can best be advanced.

Specific Contributions of the Feather

Fostering balanced participation

An open discussion without the feather in the Circle tends to be dominated by those accustomed to talking, accustomed to dealing with legal issues. Lawyers, judges, probation officers not only dominate the discussion, but analyze the issues as they might in Court. When justice officials dominate the discussion the circumstances tend to get segregated into the usual balance sheet of a Court process; mitigating and aggravating factors.

This “balance sheet” approach undermines the potential to find holistic answers, and as in Court, encourages exaggerations of both mitigating and aggravating factors.

Without the feather being passed around the Circle many people would not speak. The feather engenders participation by denying anyone the ability to dominate and by specifically affording everyone an opportunity to participate.

Limiting Monopoly of Discussion

Guidelines highlight the importance of not abusing or disrespecting others in the Circle by speaking at length.

The prevailing sense of sharing the feather induces the person holding the feather to appreciate others are waiting, just as they had to wait. The Keeper, by example and by timely reminders of the guideline to respect the right of others to speak, can indicate what is a respectful period of time to hold the feather.

Comment

It will take several Circles before everyone learns to appreciate the importance of not speaking at great length and that they need not say everything at one time, as they will have many opportunities in the Circle to speak. Speaking at great length can destroy the momentum of the process, deaden the interest of others, and divert attention to irrelevant or

peripheral issues. The lack of participatory skills within most communities will take time to overcome. Courses in active listening skills and in communication immensely help people realize no one listens attentively after five minutes, and that it is disrespectful to others to monopolize speaking time within the Circle. However, Keepers must be sensitive to the needs of some to vent anger or to disgorge highly emotional feelings. The length participants speak can depend on who is speaking and what is being shared. Unnecessarily lengthy "speeches" can be reduced by:

- *effective pre-hearing preparation;*
- *Keepers emphasizing the importance of the guidelines to share the feather;*
- *Keepers demonstrating by their example;*
- *Keepers politely reminding long-winded speakers of the importance of Circle guidelines, of the need to respect the ability of others to listen and share their input; and*
- *courses on listening and communication skills.*

Inducing a Respectful Pace to Discussions

Often people anxious to speak listen with their mouth in gear, ready to interrupt or jump in at the slightest pause. Knowing the feather will continue to be passed around until everyone has had their say, and knowing no decision will be made until everyone has spoken has a calming influence. The pace slows down. Everyone knows they will have an opportunity to be heard.

Fostering Good Listening Skills

In reducing anxiousness over when, or how to break into the discussion, the feather fosters better listening skills.

Encouraging Reasoned Responses

In many discussions, especially involving highly charged issues, words often flow before a considered response or a broader perspective of consequences has been developed.

Words hastily uttered can be useful in revealing emotions, but can introduce emotional tensions that derail the search for mutually beneficial solutions. In waiting for the feather to provide an opportunity to speak, everyone has time to think, to reflect before responding.

Creating Opportunities for Peacemaking

When someone speaks angrily from pain, or frustration, or speaks in a demeaning, provoking manner, the feather minimizes the potential for counter-productive escalation prompted by immediate angry or provocative replies. A person confronted by an

abusive outburst must wait until the feather passes through several people before responding. This provides an opportunity for others using the feather to intervene as Mediators. They can acknowledge the anger, respect the concern raised and begin to introduce constructive ways to channel the anger. In this way, the anger is not ignored, yet the peacemaking process continues without an uncontainable escalation of negative energy. Equally important, others absorb in a “good way” what has been said, and respond in a manner that reduces the urgency or need for a response in kind from the recipient of the anger.

Finally, the feather as it passes around the Circle allows the recipient of the anger a chance to think, to avoid knee-jerk responses that feed the fire ignited by a provocative outburst.

Inducing Truth

The feather is much more than just a gimmick, more than just a prop for controlling speaking time. Most participants quickly recognize the trust reposed by all in the person holding the feather to speak truthfully from the heart. The Circle fosters a collective sense of sharing a search for truth, and for sharing the pain truth often reveals.

Promoting Consensus

The feather draws out contributions from everyone before decisions are moulded. What is said in the first or second round is often picked up, referred to and developed in subsequent rounds. Points of common ground and consensus quickly begin to emerge as the feather circulates around the Circle. People connect, build on what has been previously said.

The evolution of a consensus is often not obvious, and may seem to suddenly emerge. But it builds gradually, almost imperceptibly around the Circle. A clear articulation of the consensus may not be voiced until near the end of the Circle. The feather keeps all participants, all interests engaged in sharing the decisions that shape a consensus.

Summary

The feather, or talking stick, makes a fundamental difference to the nature, focus and extent of participation in the Circle. My experience suggests the feather is indispensable. Without it, the Circle deteriorates into an informal court setting wherein the same players prevail, the same discussions dominate.

Most important, the feather helps create one of the most significant advantages of a Circle. The feather encourages everyone to share in taking responsibility for the process. Unlike mediation in which a neutral carries the primary burden for managing the process, Circles call upon all participants to maintain the balance and fairness of the process and to move in a “good way” through difficult emotional exchanges. In the

Circle, the feather helps to engage everyone in taking responsibility for the success of the process.

Keepers of the Circle

Keepers facilitate the hearing. However, their work begins well before and continues after the hearing.

Local knowledge of the community, community respect, a reputation for fairness and integrity, a commitment to fostering positive community *connectedness,* a deep understanding of the teachings of the Circle and of peacemaking and significant skills in facilitating, peacemaking and mediation are the primary qualifications for the task. Keepers must be respectful of all participants to ensure their responsibility as Keeper of the process is acknowledged and respected by everyone.[21]

In most Circles, two Keepers are selected by the justice committee several weeks before the hearing. Working together, the Keepers plug into pre-hearing preparation to ensure all parties are ready, all essential information has been shared, all questions about process answered, all key participants will attend and all logistical needs are in place.

When necessary, some Keepers will conduct private sessions with key parties. These sessions are confidential and help Keepers reduce the anxieties of participants by explaining how the Circle operates. Private sessions also enable Keepers to gain a better appreciation of the concerns and interests of key participants. Pre-hearing private sessions are not always necessary, but can be inordinately useful in avoiding unnecessary surprises, anxiety and confusion. Keepers can also use private sessions throughout the process to better understand the interests and responses of parties, and to work through blockages to a consensus.

The details of their work and training, and a full appreciation of the value of their contribution is best addressed in another paper. The following survey of their contributions will hopefully be sufficiently convincing to appreciate how profoundly important they are to a Circle process.

(1) Set Initial Tone

Welcoming participants, giving or selecting someone to provide an opening prayer, setting the style for introductions, explaining the guidelines and teachings are all important opportunities in opening the Circle for Keepers to induce a sense of comfort and safety, as well as a sense of collective responsibility for finding a solution that respects all interests in the Circle.

(**2) Facilitate Discussion**

Summarizing, acknowledging, paraphrasing – essentially by calling upon all their skills as a mediator – the Keeper can assist all participants to work through difficult issues.

Circles engage highly emotive responses to difficult personal issues. Airing, venting these emotions is a crucial step towards building consensus. If these emotions are blocked, the hostility, fear, or anger wrapped within these emotions will hinder discussions, prevent unearthing the underlying issues and regress the overall process from interest-based to a rights-based dispute process. The less shared, the greater the inclination to depend upon adjudication rather than to take on responsibility for working through difficult issues.

In creating a safe problem-solving environment conducive to venting and working through difficult emotions, Keepers are essential.

(3) Maintain Balance

In addition to mediation skills, it is equally important for Keepers to have local knowledge to draw on in appreciating whether the discussion is balanced. Have all interests been adequately represented? Are all voices in the Circle being heard and understood? Does the consensus fairly incorporate all interests?

The work of the justice committee during pre-Circle preparation, and the work of the justice co-ordinator in securing participation from all interests in the Circle, immensely helps to balance participation in the Circle, and to bring forward information and proposals reflecting a balanced perspective. In the heat of forging solutions in the Circle, Keepers must have a keen sense of the community to monitor whether a balance exists within the Circle, and whether all interests raised in the Circle have been addressed and incorporated in the consensus.

(4) Ensure Equal Access to Information

Empowering everyone to participate fully requires equal access to information. As much as possible, Keepers prompt all participants to exchange information *before* the Circle hearing, and ensure key participants are aware of, or have access to vital relevant information.

(5) Protect Integrity of Process

Circles can dissolve into an undisciplined large meeting if the guidelines and teachings are not respected. Keepers must maintain and promote respect for the guidelines and the process.

(6) Control Timing

Discussions can be intense, draining and protracted. Keepers need to know when enough is enough, know when to take a health break, know how to break and recommence on a positive note.

(7) Create Opportunities to Build Better Relationships

While Keepers attempt to help the parties find common ground to build a consensus, their primary concentration is on developing a communication flow that creates the conditions to improve relationships among all participants. The transformational capacity of Circles to change perspectives, attitudes and behaviours arises in no small way from how Keepers handle the pattern, flow and content of exchanges among participants.

(8) Reality Checks

The credibility of the Circle process depends not just on what happens in the Circle, but also on what happens after the Circle. Particularly counter-productive are consensus agreements built upon promises that are unrealistic and cannot be kept.

Ensuring all parties can realistically carry out promises made in the Circle goes a long way to successfully implementing consensus plans. Keepers must prompt the Circle to check the feasibility of plans to be realized. Often in the heat of the moment, people will agree to things they cannot deliver. The timing, resources and availability of many elements in a plan must be checked before plans become the basis of a consensus.

When the promises made in a Circle unravel, the gains in advancing “right relations” among participants, and much of the credibility in the process suffers.

(9) Closing Circle

Properly closing the Circle is as important as properly opening the Circle. Even if the Circle has not reached a consensus, participants have made significant gains on many fronts. Keepers in their closing summary must note what work is left to do, but also must highlight what has been accomplished. Even when answers are not found, sharing the search can be an immensely important accomplishment. The important work of Circles in improving relationships, in improving participatory skills, in engaging families and the community in taking responsibility for conflict can all be substantially advanced without reaching a consensus on the final outcome. Keepers in their closing summary must help all participants retain a perspective on the importance of having improved their understanding, trust and respect of others, of improving their relationships with others and of building stronger connections to families and communities.

Finally, as the hearing is only one step in a larger process, Keepers in closing must pull together the resources necessary to carry out the next step.

Comment

The full potential of local Keepers has not yet been realized in most communities. The following measures are necessary to engage the full potential of Keepers:

- *training in mediation, consensus building, and in the teachings of the Circle and peacemaking;*
- *an early designation by the justice committee of the Keepers for each Circle;*
- *an annual conference or meeting of Keepers from all communities to develop and share experiences in building their skills;*
- *published community guidelines on the role of Keepers;*
- *compensation or some form of recognition for the contributions of Keepers; and*
- *ensuring new Keepers are assisted in their first cases by Keepers with experience.*

Trained and experienced Keepers, acting as process managers in any community forum based upon peacemaking principles can be instrumental to the success of a broad range of community-driven processes.

Summary

Keepers are vital to the consensus-building steps in each stage of a Circle Hearing. (See page 74 for a partial list of how Keepers assist the Circle to move towards a consensus.) The role of Keepers, and the use of the feather are just two of many unique features of the Circle process that enable all affected by conflict or crime to work together.

KEEPERS

HOW TO HELP MOVE CIRCLES TOWARDS CONSENSUS

- Guide Process:
  Guidelines have been developed within our community. "We ask you for suggestions for other guidelines to help our Circle."

- Promote Equality:
  "We all have important experiences and something to offer."

- Generate Respect
  "We are different – but all have something to learn from each other."

- Share Responsibility
  "Problems belong to all of us – and all of us work have responsibility for finding solutions."

- Encourage New Ideas:
  "Every idea is a good one – and helps us work together to find answers."

- Seek Solutions that Benefit Everyone
  "Can we find a way to meet the needs of all who seek help today."

- Promote Brain Storming:
  "Can we imagine some new ways to deal with these challenges."

- Call Timely Breaks:
  "We have accomplished a lot, I'd like to summarize what we have done, and have left to do before taking a break."

- Maintains Positive Perspective:
  "Difficult work, but we are moving forward in a good way."

Stages of Circle Hearings

> *"Hey - if that guy can do it, I can do it - people coming into the Circle and seeing that - seeing others making it - seeing me being a part of my community - knowing me - knowing I can make it - makes me proud to be a part of all that."* (Gerald McLeod, Kwanlin Dun, 1995)

The following description outlines the primary steps in a Peacemaking Hearing. The unique dynamics of each Circle defies any single description. The sequence, importance and nature of the steps in each Circle are primarily shaped by the circumstances or participants, or by the Keeper's sense of what will work best in responding to the challenges that arise in the Circle. (See page 8 for an outline of the Hearing format.) As in any interest-based consensus process there is no precise order to follow. The unique circumstances of each case call for flexibility, spontaneity and the creative genius of all participants to move through difficult issues in seeking common ground to construct solutions that maximize all participants' interests. The stages described in this paper, especially stages three to six are often interchangeable and elements of each of these stages may be revisited several times. The process has the order the Keepers and participants wish and the unfolding of discussions impose. In moving through a Circle Hearing, Keepers must be sensitive to the needs of participants to speak when motivated to do so, and to focus on the issues in an order and in a manner that is respectful of all participants. This will require the flexibility to change, to repeat and modify the stages within a Circle Hearing.

Stage One - Opening the Circle

As in any consensus-building or mediation process the opening steps aspire to set the tone, generate levels of comfort among participants, explain and promote respect for the process. Each Keeper follows his own pattern and style in opening a Circle. Some begin immediately with a prayer, some express a personal welcome first, but all do both. The importance of taking time to ensure the opening steps properly begin the process cannot be over-emphasized.

> **Comment**
>
> *Extensive and broadly based preparatory steps provide the most effective means of creating a comfortable problem-sharing and problem-solving environment for all participants.*

PEACEMAKING AND SENTENCING CIRCLES

THE HEARING:	WHAT	WHO
STEP ONE:	Welcome …….……..Keeper	
OPENING THE CIRCLE	Opening Prayer……..…Keeper Selects	
	Circle Guidelines……...Keeper Explains	
	Introductions…….……All	
STAGE TWO:	Legal Facts……....J.P./Judge	
LEGAL STEPS	Crown Opening…….……Crown/Police	
	Defence Opening…….……Defence/Court Worker	
	Probation Report…….....Probation Officer	
	Legal Summary……J.P./Judge	
STAGE THREE:	Support Group Report…...…Offender Group Head	
CLARYFYING		Victim Group Head
INFORMATION	(Victim/offender may speak)	
STAGE FOUR:	Feather passes…….All	
SEARCHING FOR	Summary ……...Keeper	
COMMON GROUND		
STAGE FIVE:	Feather passes …….All	
EXPLORING	Options Summary……..Keeper	
OPTIONS		
STAGE SIX:	Assessing Consensus.....……...Keeper	
DEVELOPING	Feather passes/Open Circle...Keeper	
CONSENSUS	Setting out Plan…….J.P./Judge/Keeper	
STAGE SEVEN:	Summary…… Keeper	
CLOSING	Closure……All	
	Closing Prayer…….Keeper Selects	

Prayers

Everyone stands for the prayer. In some communities during prayers everyone joins hands.

Opening the Circle with a prayer introduces the spiritual character of the Circle process. The prayer calls upon all participants to work together in seeking answers. The prayers offered by Elders or others chosen by Keepers of the Circle are non-denominational, and often combine the elements of Christian and Aboriginal spirituality. The joining of hands in prayer symbolically induces a sense of sharing, of a community formed by the Circle.

Most prayers, whether by Aboriginal or other members of the community, foster a sense of belonging to a community by stressing the *interconnectedness* of all things and of all people. An emphasis on interconnectedness suggests the victim's, as well as the offender's, suffering is shared in part by everyone, and that the disharmony caused by crime affects the entire community.

Welcoming Remarks

Keepers warmly welcome all participants to the Circle, to the community. Special appreciation for justice officials, for those who have come a long way, or for those who had to overcome significant difficulties to attend will be expressed. Welcoming remarks often address in a general way the challenges facing the Circle, and why the Circle is so important to the community.

Introductions

After welcoming remarks, the Keeper asks everyone to introduce themselves by sharing who they are, what they do, how they feel and what they hope to achieve in the Circle. Keepers, in introducing themselves, in expressing their feelings, will demonstrate the input sought from others.

Introductions can inject humour, sensitivity, and a sense of a collective desire to work on the issues raised by the crime. Introductory remarks identify some of the pain, anger, and hope of participants. This knowledge can instrumentally assist Keepers in facilitating the Circle. Knowing who each participant is, a little of their background and why they are present, enhances everyone's comfort level. Introductions help Keepers assess the balance in the Circle by revealing some of the interests and positions of participants. When introductions deteriorate to simply calling out names as in a classroom roll call, the sharing and openness essential to a Circle is severely diminished.

Guidelines

Sometimes Keepers may explain the guidelines *before* calling for introductions. This enables the Keepers to open up the Circle for any participant to raise questions about the guidelines or to suggest additional guidelines during the first sharing of the feather for introductions. Providing an opportunity for participants to discuss or amend the guidelines, induces a greater sense of collective responsibility over the process.

Guidelines or teachings of the Circle are primarily derived from the fundamental principles of peacemaking and consensus building. Each keeper emphasizes different aspects of the guidelines. In all Circles the following guidelines are common.

- *Speak from the heart.* Asking everyone to speak from the heart calls for honesty and compassion for others.

- *Speak in a "Good Way".* Participants are asked to respect the feelings, interests, and inputs of others, and to strive to share openly in a kind, honest way.

- *Respect right of others to speak*. To give everyone an equal opportunity to speak, each person is asked to speak briefly, and to the point.

- *Respect others when they speak*. Participants show disrespect to the Circle and to the person speaking if they interrupt. Body language revealing disinterest or disapproval is equally disrespectful of the Circle and speaker.

- *Use of the Feather or Talking Stick*. Keepers will explain how to show respect to the feather, how to hold it, pass it and what it means to talk when holding the feather.

  Comment

  No one need speak when the feather passes to them. They may pass and wait for another round to participate. Unquestionably, the feather draws people into the discussion who would not otherwise participate.

- *Remain in the Circle*. All participants must remain until excused by the Keeper of the Circle or until the Circle concludes for the day. The Keeper indicates at the outset that breaks will be taken.

  Comment

  Leaving for any reason manifests disrespect for the Circle and for the person speaking, denies opportunities for others to respond and suggests a lack of concern for offenders or victims, or for the conflict addressed in the Circle.

Circles deal with many explosive issues. Anger can often erupt in the Circle. If someone explodes with rage and leaves, or if the recipient of the outburst leaves, the ability to work through the issues that generate extreme emotions will be severely diminished. Rather than stalk the streets and homes of a community, the anger produced by crime has a better chance to be constructively processed through Community Circles. To do so safely and constructively requires all participants to stay and depends significantly upon involvement in the Circle of people with mediation or consensus-building skills.

- *All participants are equal*. Everyone must be respected in the Circle and treated equally.

- *Confidentiality is very important*. What comes out in the Circle stays in the Circle. Participants are asked to appreciate the need for confidentiality surrounding highly sensitive matters shared in the Circle.

Comment

Confidentiality is often the basis for people to choose mediation and the key to their effective participation.[22] As yet, the ability of the Circle to provide the level of confidentiality some cases require can only be achieved during pre-Circle Hearing processes in the Justice Committee, or in Talking or Healing Circles.

In summarizing the guidelines, Keepers stress the importance of respect, of the need to find holistic solutions promoting the well-being of offenders, victims, their families, of all in the Circle, of all in the community. Relying principally upon procedures developed by the community and upon community people to facilitate the process, helps shift the process from adversarial to consensual, reinforces community responsibility for outcomes, and assists in creating a comfortable environment that encourages participation, frankness, and honesty. Creating a safe, comfortable environment for everyone to participate is essential to probe the underlying causes of conflict and to generate innovative problem solving.

As with all parts of the Circle process, the uniqueness of each community's design of the opening stage instils a sense of community ownership and pride.

Stage Two - Legal Steps

Once past the opening stage, the Keepers will pass the feather to the Judge or Justice of the Peace to guide the Circle through the necessary initial legal inputs to the Circle. During this phase the process is guided by the judge or J.P. The Judge or J.P. may, during this phase, simply hold the feather while calling on specific participants to speak.

Facts of Offence and Acceptance of Plea

The Crown reads in the facts of the offence. The offender acknowledges the facts as true. The Justice of the Peace or Judge formally accepts the plea of guilty. Even if the plea has been previously formally entered on the record, it is important for all the Circle to hear the factual basis of the charge and to hear the offender accept full responsibility.

Comment

Crown and Defence should agree in advance to the factual foundation for the plea. Any differences can be determined in court and the results read into the Circle. A failure to resolve these matters in advance can be extremely disruptive to the momentum and focus of the Circle.

Materials Filed

The criminal record and notices for higher punishment are entered by the Crown. The criminal record is passed around the Circle, and/or highlighted by the Crown or judge.

Crown's Opening Remarks

The Crown may make opening remarks outlining the usual sentencing tariff and describing their interests, concerns and what they hope to explore in the Circle. The Crown's opening remarks can profoundly affect the nature of discussions in the Circle.

Before pressing their interests in an opening address, often Crowns can participate more effectively by first listening to the victim, the community and the offender. By setting out their objectives and sentencing proposal later in the Circle, a Crown can demonstrate respect for what the community and others have done and said. Informed by what has happened, by what others believe, the Crown can explain why their perspective may differ in a manner that avoids an immediate polarizing of positions often provoked by opening Crown remarks that champion the advantages and necessity of a severe jail sentence. During the hearing, the Crown can raise questions to address their concerns and to introduce their interests.

Comment

In developing Sentencing and Healing Circles, communities sought a balanced focus between the needs of the offender and the victim. The very essence of Circle philosophy is balance, a balance reflected by according equal respect and importance to the needs of everyone affected by crime.

In some early cases, this balance was achieved. In many it was not. In the first Circle cases, communities primarily focused on the offender's interests. There are many explanations why Community Circles at first

failed to pay equal attention to the interests of both victims and offenders. One cause of their failure, now overcome in some communities, was the opening statement of the Crown pressing for a jail sentence.

If a Crown, in opening remarks, presses for jail, the community presses for anything but jail. The resulting clash of positions, as in any adversarial process, distorts or hides truth and can restrict an open, frank focus on the merits of the case. Until communities learn to believe that the solitary interest of the justice system is not to fill jails, and to believe the justice system can explore the merits of each case without pre-conceived notions of what must be done, the thrust of community input will remain principally concentrated on opposing jail sentences.

It takes time for both a Crown and the community to recognize their common interests and the rich, undeveloped potential of working together. The opportunity for communities and Crowns to know and trust each other is almost non-existent, as Crowns can change from one Circuit to the next. (In the Yukon, the Crown is rarely known by the community as anything more than "the prosecutor". Few in the community know them as people.)

Families and communities experience first hand the consequences of a jail sentence. Jail sentences take offenders who are parents, uncles, aunts, sons and daughters away from their families and friends, out of their communities. Jail severs the offender's significant daily, constructive connections to those who care about them and to the people they care about. When they return, especially after long terms of imprisonment, they are different. Rarely are they contrite, even less often do they return armed with new skills to ward off the same pressures that previously produced dysfunctional and criminal behaviour.

Families and communities in the Circle relate numerous personal experiences dramatically illustrating why our perverse reliance on jail to change behaviour and protect the community not only doesn't work, but often endangers communities by entrenching criminal lifestyles. Communities are directly impacted by people returning from jail with lowered self-esteem, with a gut full of anger, with intensified propensities for violence, with greater sexual perversities, with significantly diminished connectedness to the values of either family or community, and with further significant reasons for employers to deny them meaningful work. They return with dramatically fewer coping skills than when sent to jail. Families and communities, without much help from the criminal justice system, are directly burdened with the products of our prison system.

People returning from jail are primed to do what many do – re-offend. Each new offence triggers an escalated response from the justice system - a longer jail sentence. This war often begins with youth. By the time they reach their mid-twenties, their offences are certain to call down jail time -

even minor offences with the help of a long record can trigger long jail terms. Innocent victims of this war - the families and communities - when given a voice in the Circle for the first time, demand a halt to the escalation - no more jail.

There is a singular, strong voice in every Circle from families and friends, from all sectors of the community, including often the victims, that exclaims "jail doesn't work". Certainly in some cases, jail is necessary - but the community voice in the Circle eloquently acknowledges what most professional studies have championed since World War II - jail should only be used as a last resort.

As mutual knowledge, understanding and trust emerges, the tone and focus of Circle discussions change. The tone shifts from a debate to a discussion. The focus moves beyond merely questioning the appropriateness of jail, to embracing much broader interests. This evolution, retarded by the constant changing of professionals, can ultimately produce a better balance in the attention the Circle accords to the needs of victims, offenders and the community, and can generate a better perspective on when jail is, and is not, appropriate.

Communities are more likely to appreciate the Crown's submissions for a jail sentence when the Crown has demonstrated an appreciation of the community's interests. Both Crown and the community share many goals, especially in making the offender accountable, in preventing a recurrence, in respecting the victim's interests, and in deterring others. The community has additional interests and may have a different approach to achieving their shared objectives. Finding a consensus in advancing all interests requires the Crown to know the community, to be trusted by the community, and to be open to explore how their underlying interests in pursuing a jail sentence may be addressed wholly or partially in other ways. When Crowns make an effort to understand and respect community interests, they are in turn respected and their interests acknowledged. When this occurs, the Crowns' contributions can be enormously valuable and constructive even if they clash with the predominant concerns of the community. The ability of the Circle to produce innovative solutions and build better connections among participants flows not from everyone arriving with similar views, but from working through differences in a "good way".

Defence's Opening Remarks

While most participants will intimately know the personal history of the offender, it is important for the key personal details of the offender's life to be shared in the Circle. What most participants will not know is how offenders feel about their crime, about their

actions, and about the victim, nor will many know what offenders have done since the crime, and what they plan to do. This information, as much as possible, is best delivered by an offender.

Comment

Lawyers and court workers can best serve their client by preparing them to speak on their own behalf, by assisting only when necessary, and then primarily only on any possible legal issues that may arise. In New Zealand Family Conferences, defence counsel within the Conference speak only to legal issues (Matt Hakiaha, presentation at Congress '95, Winnipeg, October 1995). The best arrangement, especially suitable for more serious cases is a team effort between a court worker and defence counsel. Few lawyers have the local knowledge, time or skill to produce viable healing and sentencing proposals. However, some lawyers have proven to be very adaptable to the Circle process and make invaluable contributions in advancing their client's long-term best interests.

Some counsel and court workers invest many hours in preparing offenders to speak in the Circle. Their work is amply rewarded by the gratitude and praise arising from other participants for the offenders' courage to speak, and by the self-confidence and self-esteem an offender gains in speaking on his/her own behalf, and in taking responsibility for his/her future.

Court workers or defence counsel must ensure offenders fully understand what is being asked of them, and to ascertain if they can live up to their promises and to the expectations of the Circle.

Probation Officer's Opening Remarks

A written pre-sentence report is best entered into the Circle process by exchanging it among key participants at least a week before the hearing. The probation officer can orally summarize the highlights of the report in the hearing, and pass it around the Circle.

Gradually as the skills and experience of community support workers increase there is less need to rely upon pre-sentence reports from professional probation officers. A close working relationship between a support worker and probation officer enables both to decide what contribution each is best suited to make. Often both may report, the probation officer sets out the history of the offender on probation, and the local support person provides current information.

Comment

As the excellent work of Lynn Moylan-White has demonstrated in Kwanlin Dun, there are many crucial contributions probation officers can make to

community justice initiatives aside from the traditional responsibilities of probation officers. Teaching probation skills, familiarizing the community with the criminal justice system, especially with the underlying principles and practices of sentencing, assisting with difficult issues, participating in counselling sessions, structuring rehabilitative plans and generally by being a vital connecting link between the formal justice system and the community on many fronts, probation officers can be important as the police and Crown are in building a viable partnership with the community throughout all stages of the Circle process. What probation officers learn from communities within the Circle process immensely enriches their understanding and ability to effectively realize their objectives.

Summary by Judge or Justice of the Peace

The Judge or Justice of the Peace summarizes the legal background. This summary highlights the main issues, notes what must be resolved, and clarifies the sentencing options. Confusion over mandatory sentences, curative discharges, mandatory prohibitions, and other legal conditions can disrupt discussions about possible outcomes. The Judge's opening summary of issues for the Circle to address should include an explanation of the impact on sentencing of the Notice for Higher Punishment, or of any other mandatory punishments. The Judge or J.P. may outline the challenges a community faces in developing alternatives, note the normal sentencing tariff for such offences, and highlight the relevant sentencing principles considered by the Court.

When the legal stage of the Circle is finished, the feather is returned to the Keeper.

Stage Three - Clarifying Information

During this phase and the previous phase all reports, records, letters of support, statements and other documents are shared in the Circle. It is important that all of the information is shared as widely as possible several weeks *before* the Circle Hearing. This phase draws into the Circle the information, and many of the feelings the Circle will need to work through to find acceptable answers.

Support Groups Reports

These reports may arise randomly as the feather passes around the Circle, or be specifically called upon by the Keeper immediately after the Judge or J.P. completes their summary of the initial legal steps.

In each case, the Keepers need to consider what order of speakers will best serve to initiate a balanced, purposeful discussion within the Circle.

Comment

While the circumstances of some cases may dictate otherwise, my preference whenever possible is for the offender to speak as soon as possible. The offender will be called upon several times to speak, but an early contribution informs everyone of the offender's progress, attitude and aspirations. Further, my preference is for the victim or the victim support group to speak as soon as possible thereafter to provide a perspective that will balance the discussion and place the offender's crime and subsequent conduct in a very necessary context - the impact upon a victim. With both contributions made early, the Circle has a better chance of an enlightened balanced discussion.

However, in many Circles a less orchestrated order of speaking has been very successful. People simply contribute when they feel ready, when the feather passes to them, either the first, second or third time, or they contribute when the Keeper holds the feather and opens the Circle. Each community, each Keeper will develop their own practice.

Offender Support Group Report

The Peacemaking Circle process recognizes the importance of offenders taking responsibility for their lives, and stresses that actions speak louder, more persuasively than words. The support worker 's report is more compelling if the report reveals more of what the offender has done, and less of what the offender promises to do.

Support group members help offenders prepare to take responsibility over their input, and step back sufficiently to ensure the offender does take responsibility. By being directly involved in the dialogue, offenders participate in a manner that presents a more revealing picture of their character, aspirations, abilities and feelings.

Comment

The impact of an offender's active participation in Circles, on successfully completing commitments to the Circle, on achieving rehabilitation goals, and on recidivism must be studied. My sense thus far suggests the more offenders believe the sentence arises from their input, the more they feel responsible to make it work, the more likely commitments are successfully completed. Recidivism seems to be significantly reduced and offenders seem to persevere in changing their lifestyle when the overall plan bears their significant input.

Victim Support Group Report

The victim, or victim support worker, or someone on behalf of the victim presents the victim's concerns, feelings, describes the impact of the crime, relates what has

happened since the offence, and what the victim desires to see included in the sentence and wellness plan.

Comment

By inserting information about the victim before general discussion in the Circle commences, a more balanced contribution is elicited from all participants. If the victim's story is not shared until later, the focus on the offender may be accentuated to the detriment of both victim and offender. An early imbalanced focus on offender's issues may prompt victim supporters to react by challenging offenders, or their supporters – or worse, the early imbalance may, through intimidation or frustration, cause the victim to be silent.

In developing common ground, and the building blocks of a consensus agreement among all participants, equal recognition must be accorded to offenders and victims from the outset and maintained throughout the process.

The victim's input, especially if made directly in the Circle and echoed by others, dramatically changes the offender's perspective. Confronting the pain and suffering they have inflicted, and hearing the harsh disapproval of their friends, family and community, significantly removes justification for self-pity, diminishes the importance of their grievances against "the system", and leaves the offender little scope to employ perverse rationalizations that excuse or transfer responsibility for conduct. An awareness of how the lives of others are adversely affected challenges an offender's perception that "the process is a game," that their crime was "no big thing". Hearing the victim's pain can jolt an offender into genuine remorse and to an enduring commitment to rehabilitation. An intimate, direct awareness of the victim's circumstances and feelings has a fundamentally more powerful salutary impact upon an offender than the most scathing drumming by any judge.

Circle Input

The Keeper has many options in commencing Circle discussions.

- The Keeper may provide a summary immediately after the Judge or J.P. summary, before circulating the feather.
- The Keeper may call for the Offender and Victim Support Group reports before providing a summary and circulating the feather.
- The Keeper may provide a brief overview of what challenges face the Circle, and simply pass the feather to open the Circle discussion.

A search for answers begins by a Keeper providing a brief summary of the challenges flowing from the legal facts, from the reports of the offender's and victim's support

groups, and from what the Keeper understands of the overall circumstances. This initial summary by the Keeper can set the tone and focus for the Circle.

Comment

Once a judge and Keeper have worked together, their respective summaries of the issues to be addressed can be effectively co-coordinated. In all cases, the Keeper should assume the lion's share of the work in summarizing the work facing the Circle. If the Keepers are inexperienced, judges may participate as facilitators to help advance the process, but many reasons preclude judges from being as effective in managing the overall process as a local Keeper.

Second Round of Feather

The first round of the feather for introductions may induce some input about the challenges facing the Circle. The second round of the feather draws out the hopes, fears, concerns, reactions and expectations of participants surrounding the crime, the offender, the victim, and their community. The Keeper in commencing the second round of the Feather asks participants to share their feelings, to express how they hope matters might go forward in a "good way" for the benefit of everyone. Some Keepers will ask the participants to first express their feelings about the victim, about the impact of the crime on the victim, and about the victim's needs. Following a round focusing on the victim, the Keeper may provide a summary, before initiating a third round focused on the offender. At this stage in the Circle, whatever approach is taken, the inputs are emotional, often involving sadness, grief and the suffering experienced by everyone. Expressions of hope, and of pleas for change often emerge in this round. The seating of the Keepers opposite each other, enables timely inputs that call for the Circle to respect the suffering, respect the anger, and to seek the strength necessary to find a healing path to move everyone beyond their pain and suffering, beyond the circumstances that gave rise to the crime.

Pre-hearing preparation, especially the use of healing Circles for both victims and offenders, immensely assists in making this stage of the Circle constructive, in helping victims and offenders share fully and safely their fear, pain, and hope.

Keeper Summary

Whether this stage consists of one round of the feather (open to all to comment as they see fit) or two rounds (one round directed to concerns, interests of victim, followed by a round directed to offender) a summary from a Keeper is necessary to underline the importance of being open, honest, of respecting the courage of all participants and of sharing the struggle to find ways to ease the pain, to heal and to build better understanding and respect.

After this summary, Keepers may call for a break, or ask the Circle if they wish to take a break. This stage of the Circle often releases very powerful emotions. Keepers and others during this break will comfort and discuss the feelings, concerns and expectations of participants. Many will need to know the pain or suffering they experience is an unavoidable part of the healing journey. The respect, caring and sharing by others of similar experiences in the Circle helps offenders, victims and their families realize they are not alone.

Stage Four - Searching for Common Ground

The Circle examines the crime and criminal in the larger context of the social, economic, family and cultural environments to determine the underlying causes of crime, and what must be done to prevent crime, and respond to damages caused by crime.

For example, in dealing with an offender charged with impaired driving, the Circle explores what causes the offender to turn to alcohol, what is needed to keep the offender alcohol-free, what must be done to build a supportive environment for the offender through family and friends, and what must be done to protect the community from the dangers of impaired driving. The offender may be directed to follow an intensive plan of alcohol assessment, counselling, residential treatment and follow-up supervision. Some in the community may volunteer to work with the offender in forming a men's healing group to provide men suffering from substance abuse with substance-free recreational activities and with a supportive healing group. Some will take action to press for measures that address safety issues within the community raised by the case and others will take action to improve resources that prevent and treat alcohol abuse.

Accordingly, in each Circle the search for answers, is a search for a holistic approach to the needs of the offender, victim, their families and the community. In this respect, the Circle becomes not just a two-party dispute, between the state and the offender, or between the victim and the offender, but is more akin to a multi-party problem-solving process involving numerous issues and interests.

The nature of the problems addressed underscores the importance of significant pre-hearing preparation, of ensuring all affected interests have an equal opportunity to participate, and of building into the process a respect for all participants. These multi-faceted challenges, as in any multi-party process, call upon a process designed to encompass all of these features, and require experienced facilitators to maintain the integrity of an interested-based consensus process.

Keeper's Options

Once the feather has circulated the second time around the Circle, the Keeper will acknowledge the pain, anger and hopes for change. Drawing on suggestions made in

the Circle for resolving issues, the Keeper will offer a short summary of points of agreement, of what issues must be addressed and of what positive potential may be emerging, and then may pass the feather around again (hoping his/her summary will generate a sharper focus on specific issues); or hold the feather and call on specific people to:

- clarify specific information;
- address specific questions;
- add additional information; or
- open the Circle for an open discussion.

> **Comment**
>
> *After the second round of the feather, the Speaker can use many different options to assist in the development of a consensus. Holding the feather, the Keeper can change the pace or pattern of the Circle by opening the Circle for a free discussion or by calling upon specific people to clarify information or make a contribution, or the Keeper may open the Circle and guide the discussion to focus on primary issues. The Keeper may summarize the points for discussion and pass the feather around again. All options are available for Speakers to facilitate Circle discussions, and for Keepers to choose the timing and order for addressing the different "building blocks" of a consensus.*

During this phase of the Circle, the Keeper helps the Circle weave together a set of solutions or action plans from the many suggestions within the Circle. In doing so, Keepers will ensure misunderstandings, gaps in access to key information, or disagreements over facts are addressed either in the Circle or through private sessions held during breaks.

Taking a Break

A break is used to allow parties to be refreshed, but can also be strategically important. After summarizing the points of agreement and spelling out what will be required to implement the agreement, the Keeper may call for a break. This provides the respective support groups and others an opportunity to discuss what has happened and to identify any outstanding concerns. A break can provide an invaluable opportunity for all participants to informally and if need be, privately discuss options to resolve outstanding differences. Breaks provide an excellent opportunity for Keepers to check privately with key participants, especially with the victim's or their support group to ensure any emerging consensus satisfactorily accommodates their interests. It is possible for Keepers, *but not* for Judges or J.P.s, to meet with lay participants during the break to work on outstanding difficulties or make suggestions to resolve differences.

Circle Input

By this time in the Circle, the feather has passed around the Circle three times, and the Keeper may have during the second or third round held the feather and opened the discussion. The first round is directed at introductions, the second draws out many intense, often repressed emotions as participants respond to the input of the victim and offender. The third round of the feather calls upon participants to search for answers, to make suggestions for what can be done on many fronts to resolve issues raised within the Circle. This round will precipitate many strong emotions, mingled with the beginnings of innovative suggestions for the future.

Stage Five - Exploring Options

After the feather has passed the third time around the Circle, and the Keeper has opened the Circle to clarify information or to focus on concerns raised in the Circle, the process begins developing options that encompass the issues raised.

In most Circles, these issues centre on three areas of responsibility.

What must be done *by* the community

- to prevent similar crimes and redress underlying causes of crime;
- to protect and assist victims of such crimes;
- to develop adequate treatment resources for individuals or families;
- to offer specific support for the victim or offender; and
- to empower families of the victim and offender to assume responsibility for part of the plan.

What must be done *by* the offender

- to be reconnected to family and community;
- to demonstrate accountability;
- to maintain the healing journey;
- to compensate the community;
- to compensate and perhaps reconcile with the victim; and
- to “pay” for the crime.

What must be done *for* victims

- to ensure their safety;
- to re-establish constructive relationships within the community;
- to support and assist with their healing; and
- to compensate them for injuries or losses.

The Circle endeavours as much as possible to include all of these concerns in proposed options.

Keeper's Task

During this initial stage of evaluating options, the Keeper must respect all contributions by retaining all options, and not favouring any one option. The Circle discussion must have time to openly sift through all ideas. The collective creative genius of a Circle will emerge if given time to "cook". Keepers can "work" the Circle to gently probe ways of incorporating all interests into an action plan.

As in previous phases, the Keeper has many different options to help the Circle develop and evaluate solutions. (See page 74 Keepers Options)

Comment

Throughout all Circle stages an open discussion can be quite beneficial. During open discussions silences must be respected. Silences are an important feature of Circle dynamics.

Stage Six - Developing a Consensus Agreement

With extensive pre-Circle preparation, the Circle moves quickly to assess the component parts of a Circle plan. Without pre-Circle preparation the Circle faces a difficult task in moving parties from positions to interests where common ground can be identified for building a consensus around a sentencing and wellness plan.

Keeper's Role

In working through proposed options, the Keepers must help the Circle:

- ensure all interests, problems and issues raised in the Circle are addressed in the plan;
- match commitments to resources;
- ensure options are realistic, are within reach of participants to achieve; and
- clarify the overall objectives of the plan to ensure the action plan embraces all objectives.

Once the salient parts of a plan emerge, the Keeper summarizes the plan, and opens the Circle to inquire if anyone has any difficulty with any part of the plan, or has additional suggestions.

Comment

Pulling together all contributions into a consensus in a manner that respects everyone and includes all contributions takes skill, care and time.

It is equally important to identify and address opposition or disagreement with emerging agreements. Breaks, private discussions between Keepers and participants, posing the difficulties for the Circle to address, and adjourning to gather more information, to allow time to consider next steps, and to test the capacity of people to act on their goals – all of these measures can help move the process towards consensus.

Consensus Reached

If a consensus exists, the work of the Circle is *not* done. Checking the details of how the plan will be implemented is a crucial part of ensuring the plan will survive.

Extensive care must be invested in composing a healing or sentencing plan. A plan that excludes primary concerns, that fails to account for all interests, that has little or no realistic prospect of being realized will fail to secure the important advances achieved through the first three stages of a Circle process. Keepers and judges, especially, but all Circle participants must carefully scrutinize the final plan to ensure:

- all interests are addressed;
- all necessary resources to carry out the plan are identified, and available;
- any required funds are identified and covered;
- all agencies or individuals required to co-operate are identified and willing to do so;
- the timing of events and commitments is clear;
- the goals, objectives are realistic;
- how progress will be monitored; and
- what will be done to amend the plan in case of delays, violations or unforeseen events.

The plan must be checked to ensure everyone is clear on what is expected, and when and how they are expected to contribute. A good plan must have a good safety net under it. Procedures for monitoring, reviewing, and amending must be in place. Finally, there must not be any lack of clarity about probable consequences for breakdowns in the plan.

If care is *not* accorded to implementation, an excellent Circle hearing, and a good plan can be ruined. Conversely, if care *is* given to implementation, a relatively inadequate plan can be vastly *improved.*

Comment

Arrangements to accommodate unforeseen changes and to monitor progress, must be put in place. A failure to build in the flexibility necessary to keep an agreement healthy in the difficult world in which these agreements must survive can be fatal to the agreement and to much of the transformation changes individuals and communities have gained through the Circle process.

Once a Keeper has outlined and confirmed with all participants the main points of the consensus plan and summarized everyone's commitments, the task falls to the judge to include in a sentence all the offender's obligations. The judge must follow all legal requirements in imposing a sentence.

Comment

Communities are developing Community Circle Contracts to incorporate into one document the interlocking commitments of offenders, victims, their families, the community and line government agencies in carrying out the consensus plan. These contracts will enable everyone to appreciate and measure their respective commitments. Offenders have the formal sentencing documents and the Community Circle Contract to guide their conduct.

Consensus is not reached

Consensus in any process rarely entails unanimous agreement. A Circle consensus occurs when everyone can accept the plan even though some may disagree with parts of the plan, but are willing to support the overall plan. Prior preparation involving both the offender and victim support groups and a full exchange of information immeasurably helps the Circle reach a consensus. If a consensus is not reached the Keeper has several options:

1) *Call for a break.* During the break the parties can meet to assess what can be done to reach a consensus, or the Keepers may meet privately with participants to explore what might overcome their objections, or probe other ways to weave their interests into a Circle plan.

2) *Adjourn the hearing*. An adjournment for a few weeks or months allows time for all parties to consider their options or to gather additional information.

Often the blockage to consensus is a healthy scepticism that either the offender, or their support group, cannot deliver on their commitments. An adjournment provides an opportunity to test the resolve of all parties to meet their commitments. The chance to "walk the talk" often dissolves blockages to a consensus. A Judge or JP can identify specific goals to be achieved during the adjournment and either leave those goals up to the good will of the parties to achieve, or impose these goals in an Undertaking. An Undertaking adds a measure of control that can address safety and other concerns requiring immediate intervention.

Comment

The Keepers and Judge must work together in closing the Circle. Judges should refrain from moving too quickly to offer help when discussions

seem to stall or become locked into counter-productive exchanges. Keepers who are experienced Mediators or Peacemakers know when to call upon Judges or others to help move the process in a constructive direction. Judges can specifically help if legal issues block progress, or if conditions must be set to govern an offender's conduct during an adjournment. Keepers will summarize what seems to be blocking a consensus and can ask the Circle if the Judge should be asked to impose a sentence.

3) *Ask Judge or J.P. to impose a sentence*. If a consensus is not reached, the onus falls to the Justice of the Peace or judge to impose a sentence. The comprehensive discussion in the Circle on all factors relevant to sentencing, immensely assists the Judge compose a sentence. In imposing a sentence, Judges must endeavour to include as much as possible of the plan that enjoys consensus support.

The extensive discussion within the Circle on all outstanding issues is drawn upon by the Judge in explaining the underlying reasons for the sentence. In this way, the Judge can speak directly to the concerns expressed in the Circle.

Comment

Blockages to a consensus often arise from the inability of the Crown to depart sufficiently from the normal tariff for the offence to accept the proposed consensus plan.

The Circle process, while sharing many of the objectives of the formal justice system, places much greater emphasis on healing, on reconnecting offenders and victims to their families, to their communities. Its emphasis on restoration, on community development, and its inclusion of a much broader spectrum of interests makes the Circle process quite distinct from the court process, and as C.J. Bayda in R. v. Morin[23] suggests, makes the application of court sentencing tariffs less important.

A Crown's reluctance to accept dramatic departures from normal sentencing tariffs given their knowledge of the community is reasonable and for the most part accepted by the community. Their minimal experience with and understanding of the community often demands significant changes in their position be based on faith in people they do not know. This can be a difficult, and professionally very trying situation for Crown counsel as they do not seek to insult the integrity or wisdom of community participants, but feel they cannot recklessly depart from their sense of professional responsibilities without a better appreciation of what the risks might be. A number of different measures have avoided or minimized this problem for Crown.

a) *Relying upon local police who have a relatively much better understanding of the community, can overcome their reluctance to accept a community consensus.*

b) *If a Crown is assigned to the same community for extended periods and given the freedom to spend informal time in the community, a much better understanding and working relationship with the community can be created.*

Any community justice initiative that involves a partnership with the formal justice system depends upon a good working relationship with both police and Crown. To create this vital working relationship, both police and Crown must spend time getting to know the community in formal and informal circumstances.[24]

Stage Seven - Closing the Circle Hearing

The closing of a Circle is as important as the opening. Whether or not a consensus has been reached, the sharing of the struggle to find resolution, the courage to share openly, honestly, and the respect shown and received all mark significant progress that must be acknowledged, celebrated. Too often, significant progress is overlooked by focusing too much on the failure to reach a consensus.

Most Circles find their way to a consensus either initially or after an adjournment that tests the ability of all participants to realize their goals. Sometimes either the circumstances, the timing or any number of good reasons deny the ability to reach a consensus. The vital work in generating better understanding, in improving relationships within the community and in empowering families and communities does not solely depend upon reaching a consensus. The constructive contributions Circles make to community development are generally realized despite failing to reach consensus on a final sentence.

Keeper

In providing a final summary, the Keeper reviews what has been achieved, what remains to be achieved and what the next steps entail. In expressing gratitude for the contributions, patience, tolerance and time invested by all, the Keeper sets the tone for a final round of the feather.

Final Round of the Feather

Allowing a final opportunity to speak enables each participant to bring a personal closure to a very emotional session and to make their contributions to ending in a “good way”. After the final feather round, the Keeper makes a final brief comment acknowledging final concerns, and expressing appreciation for the contributions of all participants.

"Must start in a good way and end in a good way no matter what." (Sophie Smarch, Kwanlin Dun, 1994)

Closing Prayer

Closing prayers, especially if hands are joined around the Circle, poignantly emphasize the end of a shared struggle to find a "better way" to deal with the pain and suffering caused by crime and conflict. Closing prayers recognize the efforts everyone made to creating "good relations", to having the courage to speak from the heart, and to show respect and compassion for others. The final prayer closes the community formed by the Circle and asks for the safe return home of all participants, and for the "Creator" to take care of the families and communities of those present.

Some Circles then close with a round of handshakes, or with numerous private exchanges.

The closing of Circles must be designed with care by the community to ensure all leave in a "good way" and all the work towards improving relationships is acknowledged even if a consensus has not been reached.

Comment

The Circle can release extreme emotions. Extensive follow-up assistance must be in place for many who have deeply probed and shared their private hells and fears in the Circle.

Summary of Part V

The kind of process used to resolve any conflict is crucial. Process can significantly influence:

- who will participate;
- how parties participate;
- what information will come forward;
- what information will be important;
- what values, interests will primarily shape outcomes;
- whether an agreement will be reached;
- what the agreement will contain;
- the degree of commitment the parties have to the agreement;
- the durability or longevity of the agreement; and
- the nature of the future relationships among the parties.

On all of these matters, there will be a profound difference between what happens in Court and what happens in a Circle. A Circle will involve the same people in a

dramatically different way and involve many new people, will address different issues, include different information and produce different results. The Circle encourages the values and personalities of the people locked behind professional roles to emerge, allows all participants to engage each other as equals, and initiates a search for answers to address a broader range of interests. It is *not* that one process is better than the other. It is simply that they are dramatically different; each better suited for a specific purpose. Given that the kind of process used can significantly affect outcomes, it is remarkable and tragic that more time is not invested in considering which process in each case is best suited to serve the collective interests of all parties.

The Circle Hearing, built upon the principles of mediation, consensus building and peacemaking, enables all participants to take responsibility for decisions affecting their lives, their families and their community. The environment of a Circle Hearing is a different world, especially for those accustomed to the adversarial atmosphere of the courtroom. I believe, and have experienced much in Circles to sustain the belief that the Circle creates a problem-solving environment that unlike the courtroom fosters among participants a desire to share the work of finding mutually beneficial, mutually respectful solutions to extremely emotional, complex issues.

Most people, even in the midst of intense conflict, if respected and if given a full opportunity to be heard, will be open to finding common ground. Most prefer to leave the process feeling respected, and feeling they have respected others, feeling they have been and are perceived to be fair, feeling they have been heard, and are viewed as having listened. If participants are satisfied the process is fair, they will be more likely to be satisfied with the results. This relationship, between procedural and distributive justice profoundly contributes to finding common ground, constructing a consensus, building better relationships and generating the commitment to make the agreement work.

Comment

In Circles that achieve a fair, balanced and safe, confidential environment to address difficult questions, participant satisfaction with the process is substantial. These Circles are more likely to secure a consensus and the resulting agreement more likely to endure.

Circles encourage people to take the high road about their life, about others, and to seek out ways of moving beyond differences in a “good way” to build better relationships. I say all of this about the Circle without any pollyannish vision about human nature. I say this because it has repeatedly been the experience of the Circle. Not that all Circles draw out only and always the good in people, but Circles do profoundly encourage and enable people to take the “high road”, to share with others in a “good way”. Circles, by building better relationships among participants, create environments conducive to creative, shared problem-solving.

The rituals of a Court process reflect the primary elements of a degradation ceremony that isolates “bad” people from their communities. These degradation ceremonies sear deeply into the minds of many offenders an unrelenting low self-esteem. “An … important feature of these (degradation) ceremonies in our culture is that they are almost irreversible.”[24] Conversely, Circles strive to be an integrative ceremony, reconnecting offenders to their families and communities in a manner that encourages them to realize they have much to gain in retaining their healing path - and much to risk in failing to earnestly keep their commitments to themselves and to those who mean the most to them (see diagrams on pages111 to 115).

Part VI

Follow-up

"Success arises from being able to involve both heart and mind and comes from recognizing goodness in all people. Like a child learning to walk - when they fall we do not say to the child - he'll never be able to walk." **(Mark Wedge, Carcross, 1994)**

Importance of Follow-up

> *"My son went to Circle - nothing happened, he just laughed it off - he didn't do his community work - didn't do most of the stuff he was supposed to - Circles don't work - they're crap."* (Community Resident)

This parent's criticism raises several points. First, this parent is right. This Circle didn't work. Any process no matter what its outstanding potential, cannot work if it is not properly understood, not properly implemented. Any good idea can be ruined by bad implementation. The steps taken in this case breached several of the essential elements of a Circle process.

Second, this observation underlines the crucial importance of follow-up. All communities must have the resources to monitor and carry out Circle plans. A failure to do so undermines community support, justifies government indifference and ultimately saps the spirit and integrity of the Circle. Careful, constant monitoring, periodic reviews, a strong support team of volunteers and a Justice Committee Co-ordinator to constantly monitor the situation, immensely increases successful implementation. If the offender fails to carry out their commitments, something must be done, and if the offender's conduct continues to disrespect the Circle, a breach should be laid. In this regard, the formal justice system adds an important reinforcement of the community process:

> *"We need a backbone - and that backbone should be the Courts - when they (offenders) fail us (the community) they need to know there will be consequences - and not only from us - but from you (the Courts) as well."* James Allen (Justice Committee Member, Haines Jct., 1995)

Third, this parent's sentiment also manifests a much higher standard imposed by the public on community justice than on the formal justice system. Criticism has been expressed for years about the ability of the justice system to enforce probation orders. Now, that failure of the justice system seems to be grudgingly accepted. A tougher public scrutiny of any new community justice system must be expected simply because it is new. Its newness imports the explicit and implicit promise that it will do a better job.

Fourth, this viewpoint also reflects a public focus on “justice issues”. The public has been conditioned to assess the “success” of the justice system by the length of the jail sentence imposed or by the successful completion of community work or restitution requirements. These assessments fail to take into account positive changes in the families and communities of the offender that community justice achieves. Despite the offender’s failure to fully carry out his/her commitments, there may be many other significant changes in his/her life that are totally overlooked.

> *“We know - we live with these people - sure they might fall off the healing path - may get drunk again - may even get into trouble again - but what we see ‘cause we live here and you don’t - are big changes - important changes. They draw a month or more of sober breath for the first time in years - they start doing good things in the community - they’re trying - they’re changing - we see this so we don’t get so disappointed or surprised if they relapse or something - we expect that and we keep supporting them. You don’t see them drunk all the time any more. You don’t see them committing serious crimes any more - these are good, important changes - for us these are successes - more than we even thought might happen in some cases. For us these are big changes - big successes - steps headed in a good way - You gotta be careful about what you’re calling a failure ‘cause if you call it a failure they’ll think and act like a failure.”* (Barb Hume, Community Justice Volunteer - Haines Jct., 1993)

Fifth, this parent’s criticism reflects the need to develop a special Circle process that is sensitive to and appropriate for youth. The composition, procedures and remedies of Youth Circles must be especially suited to the needs, interests and issues of youth.

Sixth, while this parent’s criticism draws attention to the importance of follow-up, the cause of the “failure” began much earlier. This parent was not fully engaged in pre-Circle preparation, and never sufficiently involved in the entire process to share responsibility for outcomes or be reinforced in the role of a parent.

Any family that is in need, or that has exhausted their efforts and given up on their children, must be reinforced and re-engaged as much as possible in taking responsibility for their children. Failing to make this parent a part of the process created the same expectations of the Circle many parents have of the justice system - *Why didn’t they change my child? Why didn’t they get my child to do what my child was required to do?* In being scornful of the system, be it the formal or community justice system, the youth is also scorning his/her parents.

Alone, neither the family, the community, nor the formal justice system can do much to change the anti-social behaviour of youth. Working together, family, community, the formal justice system, and the youth, we have a chance – a very good chance to make a difference.

Finally, failures, as in this case, must be constructively embraced, not defensively countered. Mistakes are the key learning experience of community justice - provided there exists a collective will among the partners to call on experience to move ahead.

Each stage of the Circle process is crucial. A failure to invest adequate care in any stage, pre-hearing preparation, the hearing or follow-up, severely weakens the process. For example, an excellent plan, carefully evolved through extensive pre-hearing preparation and honed in a Circle Hearing, can fall apart if inadequate attention is accorded to monitoring and implementing the plan.

The importance of follow-up can be highlighted by noting the problems arising from failing to successfully implement Circle dispositions. Offenders who breach their Circle commitments, who show disrespect for the Circle and community, or who re-offend can:

- severely reduce public confidence in community justice;
- burn out or discourage volunteers from continuing their involvement;
- undermine continued government funding;
- jeopardize opportunities for others to benefit from the special help community justice projects can offer; and
- restrict opportunities for constructive community development through community justice initiatives.

It is important for offenders *before* being accepted into the Circle, and throughout the Circle process, to be aware that their failure can affect many others. The Circle imposes an exchange of commitments, of responsibilities. The community, in accepting the offender, takes on responsibility to help the offender. The offender, in seeking community help takes on a responsibility to their community, family and supporters to dedicate themselves to their healing objectives.

Given the limited resources communities can call upon, many communities may have to be more selective in accepting cases, otherwise the quality of their work, their success in changing lifestyles will severely diminish.

However, the importance of success should not push community justice into picking only easy or sure-fire successes. All communities must do as Yukon communities and Hollow Water have done - take on the cases they believe will make a difference in their community. These considerations simply caution communities to ensure the resources necessary to successfully implement Circle dispositions are not sapped by the demands new cases impose. Until adequate resources are available to communities, new cases – especially tough new cases – may have to wait until existing commitments to previous cases can be fully served.

Above all else, it must be remembered, follow-up is not just about failure, or about preventing failure, it is also about success, and about the importance of celebrating success within families and communities. It is as important, if not more important, to celebrate success as it is to discipline failure. (How often do we have a chance to celebrate the success of an individual, family or community within the formal justice system?).

Comment

There are simply never enough appropriate resources to preserve, nurture and capitalize the gains made in Circle Hearings, in changing the lives of offenders and others. It is tragic to see so much progress dissipate due to an inability to provide the help many need to remain on their healing path. Having gained so much ground, having drawn on so much courage to change their lives, it frustrates volunteers when there are not the resources and timely help available that could prevent offenders from relapsing into old lifestyles.

In the Circle process, we are learning follow-up is a lifetime task - and can never be fully terminated. The damage so many have suffered in their past constantly threatens to regain control over their lives. Their follow-up period ends when they die.

Methods of Follow-up

Reviews

Reviews of Circle sentences are important for many reasons.

- The review date provides a deadline for support groups to bear in mind as they work through goals within the sentencing plan.

- Many in the community and especially those in the offender's support group will monitor the offender's progress and contribute at the review. The offender will be expected to provide a personal accounting at the review of what has been accomplished. Knowing they will be personally accountable to the community induces many offenders to take more responsibility for their own healing journey.

- Reviews enable fine-tuning adjustments to any sentencing plan. Unexpected changes can be accommodated, slippage can be redressed and stellar progress can be recognized.

- Community appreciation, and the celebration of significant progress helps to retain the vital motivation communities can induce in offenders and in others struggling to change their lives. A broadly based awareness of success stories provides invaluable reinforcement to all who have taken on the emotionally difficult work of helping others. Their hard work and sacrifices are rewarded by an offender's success, and by the success of anyone who stays on their healing path.

- Reviews provide an equally important opportunity to offer support and any additional help to a support group.

- *Reviews should not simply focus on the offender.* The review can be instrumental in appreciating what further needs the victim, or families may require. The transformations community justice processes seek to advance are seldom achieved in one hearing, or in one pivotal moment. Changing people's values, perspectives, capacity to understand and respect others all takes time, and constant care. Reviews are simply one part of the overall care and management of transformations, of healing journeys.

To attract and maintain broad-based community support, the community must be fully informed of what actually happens after the Circle Hearing. Unfounded rumours about the offender's failure to comply with the sentence can be as damaging to community support as an actual failure to comply. Reviews help distinguish between fact and fiction. The community must be constantly informed of what happens to offenders in carrying out the Circle sentence. Relaying accurate information about the good news is as important as accurately relaying bad news. Community support, and formal justice agency support, depends upon knowing the success stories, and upon knowing what is done if something goes wrong.

Support Groups

Participation in the Offender Support Group begins for many before the Circle and continues throughout the duration of the Healing Plan. The support group that helped shape the plan, now must help implement the plan. Responsibility can be shared with probation officers or exclusive responsibility assumed by the support group over some or all conditions of the plan. The primary responsibility for supporting the offender, for monitoring the offender's performance and implementing the plan falls to the support group.

Responsibility is best shared within a support group. The best results seem to occur when the group meets regularly and functions as a team in working with offenders. By delegating within the group specific tasks in carrying out the plan, and by sharing the task of maintaining regular contact with the offender, the workload of the support group will be less onerous.

The same responsibilities for monitoring and implementing the victim's Healing Plan falls to the Victim support group.

Comment

Support groups are crucial to the process. Before, during and after a Circle Hearing, support groups can make fundamental differences on many levels. Taking care to ensure all support groups are respected, assisted, and provided with all the resources they need can make an enormous difference to what a support group can achieve.

Probation Officers

The importance of maintaining good communications and an effective working partnership between the community and justice professionals, is no less important *after* the Circle than during the pre-hearing and hearing stages in the process. As a resource to the support group, or to local part-time probation officers, or to local justice co-ordinators, probation officers maintain the crucial working partnership between the community and professional justice officials during the follow-up stage of a community justice process.

Probation officers assist the support group, but whenever possible they should leave the primary responsibility for implementing the plan with the offender and their support group.

Comment

As in Vermont, probation officers can be invaluably employed as community facilitators, as vital linkages between the community and state resources in pulling together the efforts needed to successfully implement community justice plans.[25]

A follow-up team consisting of the support group, a local probation officer and a probation officer with skills in community justice from the formal justice system can be invaluable in facing the challenges a healing plan imposes on offenders. This collaborative approach can make an immense difference in carrying out Circle plans, in usefully engaging and encouraging volunteers, in maintaining mutual respect and understanding between the community and professional justice agencies, and in securing easy access to state resources.

To build an effective co-coordinated working relationship between a probation officer and the community, it is necessary to:

- offer training sessions involving both volunteers and the probation officer, on community justice;
- provide clear instructions and support from senior managers for probation officers to work with communities;
- create ample freedom for probation officers to spend time *in* the community, learning about the community, and developing personal relationships with community members; and
- establish a contact person within communities (community justice co-ordinator) to work with the probation officer.

Local Part-time Probation Officers

Local part-time probation officers or local justice co-coordinators are often better suited to work directly with support groups. Centrally located probation officers working within

the formal justice system can train and support local volunteers or part-time staff of community justice committees. Local people, respected within their community, with good interpersonal skills, and a desire to work on individual and community well-being, have all the qualifications needed to be a local probation officer. Their knowledge of the community can effectively extract information necessary for comprehensive pre-sentence reports, victim impact statements, and can be instrumental in finding and engaging local resources for community-based sentencing. Their presence in the community can run down rumours, correct misinformation, keep local people informed and regularly, if not daily, monitor both victim and offender plans.

Comment

Developing and strengthening a community justice partnership requires aggressively seeking ways to localize positions and power, and shift responsibility to local people, to families, to communities.

Placement Exchanges

Many justice officials could be seconded to community justice projects on a part- or full-time basis and local volunteers or community staff could be taken on for training by justice agencies.

Comment

Seconding officials from formal justice agencies to work in communities for community justice projects can significantly advance the partnership between communities and the justice system. The secondment of a probation officer to Kwanlin Dun Community Justice was an excellent although partial exploration of the potential of allowing justice officials to work in and for communities. When possible, a full-time immersion for at least three years will yield the best results in developing the relationships, understanding, perspectives and trust necessary to successfully realize the benefits of a local secondment.

Specific Attainable Objectives

As much as possible, easily measured tasks should be employed in healing and sentencing plans. Specific tasks, such as providing a cord of wood, painting a house, paying compensation, or completing treatment programs within specific time lines can be easily measured.

Offenders can be required to complete daily diaries, and should always be given clear instructions to *initiate* contact with probation officers or their support group. *They must assume the primary responsibility for carrying out their sentence and healing plan.*

Reinforcing Families

Families are the best resource in changing behaviour, in keeping offenders on a healing path. The best government programs cannot match what a family can do. Even significantly dysfunctional families, if helped to act as a family, can be instrumental in helping change behaviour.

Follow-up strategies must involve the families of victims and offenders, and do whatever is possible to support and reinforce families to enable them to be effective. To reintegrate offenders to their family and community a supportive network must be created for offenders to evolve a positive identity, high self-esteem, and secure connections to constructive influences.

Follow-up Circles

Keepers, the justice committee, or the head of a support group should establish a Follow-up Circle of all participants to monitor progress. Follow-up Circles involving both offenders and victims, or held separately for each, can applaud progress, fine-tune conditions or identify major problems. These Circles can be a critical part of maintaining the momentum of the Peacemaking Circle, and unlike Circle Reviews, do *not* require any participation from justice officials in their formal capacity. They can be quickly convened at any time.

Many are induced to believe the process ends with a successful Sentencing Circle. The process contains a further vital step: the *successful implementation* of the sentencing or healing plan. The Circle is but an important step in developing the plan. Follow-up is critical. Follow-up advances the important work of all previous stages in the process.

Breaching Offenders

To retain respect for the Circle, consequences should attach to an offender's failure to honour commitments to the Circle. What constitutes a failure, and what consequences ought to apply, must be initially determined by the support group and probation officer.

In setting achievable standards and in measuring the success or failure in achieving these standards, the community, the families and friends of the offender, and those on the support group (especially those who have walked through life in similar shoes) are far better equipped than most if not all justice officials who assume responsibility over offenders they know little about. As professionals we often act so decisively with inordinate power on such paltry information and even less knowledge, it ought not be so surprising to discover we often damage more than we repair. By tempering our judgment with the knowledge within the community, we can minimize the inadvertent damage we do.

When the community signals that the offender has given up, or has abused his/her privilege to work within the Circle process, the justice system can intervene by tightening up the conditions of the sentencing plan, or by laying a formal breach. Once

the community has signaled the offender should be breached, the probation officer, police or local lay probation worker, must take the lead in prosecuting the breach.[26] Community members volunteer to help, not to punish offenders. Community members are placed in extremely difficult positions if they are required to prosecute those they have worked hard to help. While some community people are willing to actively participate in breaching those who break their commitment to the Circle, the primary responsibility for prosecuting and punishing should fall to justice officials.

By taking over the process of prosecuting and punishing offenders who reject the help offered by their community, the justice system invaluably contributes to its partnership with the community. Effective sanctions for breaching community sentencing plans provide a backbone to community justice. The availability of formal consequences, and the use of such consequences, when appropriate, helps motivate offenders, and secures a broader-based credibility within the community for the process.

In most cases, the most significant, lasting consequence to the offender for failing, is the disapproval, condemnation and disappointment of the offender's family, friends and community.

Reorganizing Success

When an offender fulfills their commitments, a tangible recognition of the success serves to reinforce the offender's motivation, to encourage and honour the work of the support group, and to underscore the ability of the community to make a difference. Formally terminating a probation order in the Circle, an appreciation community dinner, and the individual congratulations offered on the street by friends and strangers, all contribute to celebrate an important event in the life of the offender and in the life of the community. Each community has its own creative way of celebrating the gains offenders, victims and their families make in restoring harmony and in advancing their well-being.

Maintaining a publicly displayed honour list of those the community recognizes have succeeded and another honour list of those the community recognizes have contributed to the success of community justice provides a small, but vital reminder of what has been achieved. Small public acknowledgments do much to maintain community pride, individual pride, and a shared sense of accomplishment. Too much focus is placed on failures. Communities need to take time to highlight and remind themselves and others of their many successes. Unfortunately, it is the few failures, not the many successes that are well known.

Community Pardon

Some communities have begun to explore their own community-based system of pardons. Offenders who have successfully completed all their community commitments, have continued to stay on "the good trail", and have volunteered their time to repay the

community for community support, trust and belief in them, may be eligible to be completely pardoned by the community for all past crimes.

> *"We want to wipe the slate clean - give the person a new start. A pardon is a clear message or important symbol and ritual to say - 'Welcome back! Congratulations! and, We recognize you as a new person." (*Kwanlin Dun - Justice Committee member, 1993).

Summary - Part VI

In the eyes of many community and professional partners, the acid test of the Circle process is based on what happens *after* the Circle. If the offender fails to live up to the expectations expressed in the healing plan, and especially if nothing is done to sanction this failure, the belief in, and support for the community justice process is severely diminished. This basis for evaluating the Circle process in part evinces a failure to understand the larger objectives of the Circle and reflects an inability to move beyond a formal criminal justice perspective in appreciating the nature and purpose of community justice.

Firstly, they are wrong to do so because community justice processes are not solely about changing an offender's behaviour; they are equally about changing community behaviour. To change the nature and impact of crime within communities, communities must change. Each case, through a community justice process, regardless of whether the offender changes, changes the community. The experience of working together, of being empowered to make a difference, of caring, developing new participatory skills, of getting to know, respect and appreciate others within the community, of working out differences, of gaining a better understanding for the perspective of others, and of taking responsibility within their communities, builds more capable, more responsible citizens - and ultimately builds healthier communities. These are the changes that make lasting differences, that ultimately have a chance of reducing crime. The overall well-being of the community cannot be secured solely through placing more reliance on, and investing more money in formal justice systems.

Secondly, Circle processes are not *simply* about settling scores by ensuring compensation is paid or by punishing offenders. Certainly these aspects are present, are important. More important are the transformations in the attitudes, perceptions and lifestyles of the offenders, their families, of all participants. If the Circle process imparts to an offender a more constructive view of themselves, of their community, of the victim, even though offenders may not have made enough changes to overcome lifelong substance abuse, or to secure a source of livelihood other than crime, they have begun a crucial change process. Those who know them see this change. Those who know them applaud and support the gains they have made. To overlook these gains, to condemn their failure to make it all the way to the "good life", can destroy what seems like miraculous changes to those close to offenders who have prayed for years to see such signs of hope.

How well someone does cannot be measured solely by what they achieve, but must be measured by what they do with what they have. We don't expect someone with a broken leg to finish the marathon, we can't expect someone with a severely broken life to overcome easily a life buried in substance abuse.

Circles are not about experiencing the burning bush, about miracles - they are about tough, painful steps, sometimes small, but always crucial steps towards change. Sometimes the impact of Circles is at first not discernible and often not evident until years later.

> *"We're now seeing people succeed who at first, after the Circle, stumbled several times. They weren't ready, or didn't fully understand how hard it would be to change - many picked up things in the Circle that later helped them make the change - so we are happy to know we plant the seeds of change that grow years later into a new life."* (Rose Couch, Kwanlin Dun Community Justice Manager)

Those who measure success by the simplistic yardstick of recidivism rates fail to appreciate the importance of small changes in a "good direction". They fail to see the world through the eyes of anyone who knows the parties, the family, and the community. They fail to understand the dynamics of broken lives. They expect others to achieve miracles they could never achieve carrying the same burdens others carry. They don't understand the burdens others carry, so they cannot appreciate what has been achieved.

Third, imposing criminal sanctions upon offenders who fail to "complete" the sentencing plan may not always be appropriate. Knowing when to do so, when not to, requires an intimate knowledge of the offender, of how hard the offender has tried, and of what hurdles the offender had to surpass. The community in most cases must determine when to give up on offenders who fall short of expectations set out in sentencing plans. They have a better grasp of what fine-turning is necessary.

Finally, most Circle plans aim for an ideal beyond the immediate reach of most offenders. Some plans employ conditions such as "absolutely abstain from alcohol" upon offenders who have been severely immersed in substance-abuse since early childhood. These conditions are imposed to contain an offender's behaviour and to empower police to intervene before a slight relapse into drinking becomes a three-month binge that wipes out all gains. Consequently, such conditions are imposed to help keep offenders on the healing trail, but with reasonable expectations that the condition will be violated.

To fairly assess what steps should be taken to redress an offender's failure to abide by the sentencing plan requires active participation in the process that constructed the plan, *and* an intimate understanding of the circumstances since the Hearing. Most critics who condemn the failure to sanction offenders for violating the plan lack the basis for fairly assessing what to do.

There are many other reasons underlying the fallacy of assessing the value of community justice upon either the failure of the offender to comply with the Sentencing Plan, or the failure of the process to sanction a breach of a Sentencing Plan; too many to explore in this paper.

Comment

Certainly the criminal justice system could not pass the same exacting demands for success we impose upon community justice initiatives. If we assessed the formal criminal justice system on the same criteria, a long time ago we would have ceased to support a process that experiences such alarmingly high rates of recidivism, and allows so many offenders to breach or cursorily honour their Probation Orders.

"Had good intentions coming out of jail - but as you walk out of jail - it all sorta fades away 'cause you return home to find it exactly the way it was - as you have no identity other than as an offender - but in Circle become recognized as a community member - see people who are willing to help - really gave me a new sense of myself." (Gerald McLeod, Kwanlin Dun, 1995)

PRINCIPAL FEATURES OF COURT PROCESS

A DEGRADATION CEREMONY

DISAPPROVAL OF ACT	—	"A VERY BAD THING YOU DID"

DEGRADATION OF PERSON	—	"YOU ARE A BAD PERSON TO DO SUCH A BAD THING"

ISOLATION / REMOVAL	—	"AS A BAD PERSON WHO DID A BAD THING YOU MUST BE PUNISHED – YOU MUST BE SENT TO JAIL"

DEGRADATION CEREMONIES

- **FOCUS ON OFFENDER – NOT PERSONAL/SOCIAL SITUATION**
- **FOCUS ON ACT – NOT ON CAUSES**
- **EXCLUDE FAMILY / COMMUNITY / VICTIM**
- **TENDENCY TO WORSEN:**
    - **OFFENDER – VICTIM RELATIONSHIP**
    - **CAUSES OF OFFENDING BEHAVIOR**
    - **VICTIM'S SUFFERING**
    - **COMMUNITY WELL-BEING**
    - **DISCONNECTION TO FAMILY, FRIENDS, COOMUNITY**
- **CRIMINAL CONDUCT LIKELY TO RECUR**

ASSUMPTIONS:

- **PUNISHMENT CHANGES BEHAVIOR**
- **UNDERLYING SOCIAL CONDITIONS NOT CONTRIBUTING FACTOR**
- **FAMILIES, COMMUNITIES NOT IMPORTANT SOCIAL CONTROLS**

PRINCIPAL FEATURES OF PEACEMAKING CIRCLES

A REINTEGRATION CEREMONY

DISAPPROVAL OF ACT	—	"A VERY BAD THING YOU DID"
↓		
DISTINGUISH ACT / ACTOR	—	"YOU DID A BAD THING – BUT ARE A BAD PERSON. YOU HAVE MANY GOOF QUALITIES"
↓		
REINTEGRATION	—	" MANY HERE - WE KNOW YOU – CARE FOR YOU – WANT TO SUPPORT YOU"
	—	"HOW CAN WE HELP YOU BE A STRONG PART OF YOUR FAMILY - COMMUNITY"

CONNECTING VS. DIS-CONNECTING

COMMUNITY CIRCLES:

FOCUS ON CONNECTING / REINTEGRATING

OFFENDER TO VICTIM
" TO FAMILY
" TO COMMUNITY
" TO HEALTHY ENVIRONMENT

VICTIM TO FAMILY
" TO COMMUNITY
" TO SELF-ESTEEM

PERSONS SEPARATED FROM FAMILY AND COMMUNITY LIKELY:

- TO FEEL ISOLATED, REJECTED
- TO RETURN TO SUBSTANCE ABUSE
- TO CONTINUE CRIMINAL CONDUCT

CHANGES – FROM COURTS TO COMMUNITY CIRCLES

	COURT		COMMUNITY CIRCLE
PEOPLE	Experts Non-residents	←	Local People
PROCESS	Adversarial State V. Offender	←	Consensus Community v. Problem
ISSUES	Laws Broke	←	Relationship Broken
FOCUS	Guilt/Offender	←	Holistic View • needs of victim/offender/ community • source of problems • resources for solution
TOOLS	Punishment Control	←	Healing/Support
PROCEDURE	Fixed Rules	←	Flexible Guidelines
RESULTS	Winners / Losers	←	Maximizes Interests of all

… COURTS ATTEMPT TO *SETTLE* DISPUTES
… COMMUNITY CIRCLES ATTEMPT TO IMPROVE RELATIONSHIPS AND *RESOLVE* DISPUTES
… COMMUNITY CIRCLES FOCUS ON CHANGING THE CIRCUMSTNACES THAT CAUSE CRIME

Part VII

Conclusion

"What we call necessary institutions are often no more than institutions to which we have grown accustomed… In matters of social constitution, the field of possibility is much more extensive than men living in their various societies are ready to imagine." **(Alexis de Tocqueville)**

Community and Formal Justice Process Can be Mutually Supportive

While many principles and practices are common to community and formal justice systems, there are fundamental differences. Despite these differences, both systems can be mutually supportive. Community justice options range from processes that operate without any government involvement to processes that closely co-operate with formal justice systems. Having a range of options, and choosing the best option for processing very different disputes dramatically improves our ability to prevent or effectively respond to crime.

In summarizing the differences between Courts and Community Peacemaking Circles, the chart on page 115 does not aspire to laud one process over the other, but rather to highlight the differences in order to appreciate which conflicts are best suited for each process.

Whatever advantages flow from a Circle, or from other community justice initiatives, community-based processes cannot replace the need for formal justice services. Community-based processes – if properly supported by government and by the community – can improve the use of formal justice services, can complement and in many cases reduce the use of formal justice services. By enabling families and communities to meaningfully participate we will reduce the transactional costs of excessive reliance upon government services and significantly improve results. Depending excessively on any one process severely weakens our capacity to effectively cope with conflict within our communities.

Transitional Challenges

After almost a century of the state trying to do what families and parents should do and are better suited to do, we are now beginning to recognize the costs and failings of the state as a surrogate family or as a provider of community services. In getting families and communities to reassume their responsibilities we have much work to do.

In changing from an almost exclusive reliance upon an adversarial, professional-dominated process focused on legal rights to an increased reliance upon a consensus, community-dominated process focused on interests, the transition for both professionals and communities will be difficult. The shift will challenge both sides. In working together both the community and professionals will encounter many difficulties. To move past their difficulties and misunderstandings both must be fervently committed to exploring the potential of working co-operatively. Many professionals and community people may cling vigorously to current systems that exclude meaningful public participation and depend on professionals to do the tough, difficult work of processing conflict. It is to be hoped that many on both sides will have the vision, pioneering spirit and courage to persevere in forging new partnerships. Both sides must appreciate the mutual benefits flowing from successful partnerships. Justice officials must appreciate their jobs are not threatened, but may be changed - in ways that remove many existing unrealistic demands and offer greater job satisfaction. Communities, families and individuals must cease delegating the responsibilities of citizenship to others, cease making unrealistic demands on government, and see that their involvement can make a difference – can advance their personal interests in creating safe neighbourhoods, and in building healthy communities. Participation in circles can enhance everyone's sense of belonging to, responsibility for and connections to their community.

While these changes will be difficult - if we fail to move in directions that restore individual family and community responsibilities, that revive a sense of collective obligations, that build trust and respect to appreciate and honour our differences, we will all lose an opportunity to stem the rising tide of crime and of the rising financial and social costs of crime.

There are many community justice initiatives that do this. Many have been proven to advance collective interests in community well-being in overcoming differences in a peaceful, constructive manner. Many succeed despite a lack of effective government support. A Community Peacemaking Circle is but one of them.

Reducing Justice Costs: Increasing Community Well-being

What do community justice systems cost? While I am not certain about total costs or benefits, I feel confident even within the narrow focus of the perspective taken by the criminal justice system on both costs and benefits, community Circle processes in *appropriate cases*:

a) cost significantly less than formal justice processes; and
b) provide significantly greater benefits.

In considering costs, the following factors should be noted.

- Firstly, given current, incredibly high recidivist rates within formal justice systems, if the Circle process in the long run causes significant reductions in the rate and kind of crime by repeat offenders, the resultant savings throughout all parts of the justice system will more than offset any extra processing costs in taking extra time to "get it right", and to involve families and communities. Too often we forget to include the social costs of our justice system; costs which are more draining than the costs of justice services.[27]

- Secondly, all Circle processes can be primarily dependent on local resources and local people. Some communities are operating Circles without lawyers, judges and other professionals. These Circles depend upon local Justices of the Peace, local people trained in mediation acting as Keepers of the Circle, the local police officer, local court worker, and a wide range of volunteers from the community.

  Through developing local skills and experience in conflict resolution, the ability within communities to process cases in more informal processes such as diversion, Healing Circles, mediation and other local initiatives is significantly enhanced. These different community-based processes offer a less costly means of processing cases often in a much shorter time span between offence and disposition. Community-based processes incorporate local concerns and rely extensively upon local resources to implement sentencing plans. Using community-based processes can generate substantial savings by lowering process costs and by improving results.

- Finally, the benefits to overall community well-being also must be assessed. Working collectively in the Circle fosters in many a sense of belonging to a community, and a feeling they have something to contribute:

  > *"I see, I help - that helps me - makes me think I'm part of doing good… being involved in my community's healing journey." (*Volunteer, Kwanlin Dun, 1993)

The Circle, in probing the underlying causes of criminal behaviour, prompts community initiatives to redress adverse social conditions and to build resources to assist in healing victims and offenders.

Peacemaking Circles are not just about justice. (Peacemaking Circles are as much about community development as they are about justice.) The impact of Circle processes spread into the home, schools, neighbourhood and workplace - throughout the community in a manner that enhances community safety and well-being. Any analysis of the impact of Circles must account for these contributions to the social capital of a community. Peacemaking Circles are not short-term solutions, but rather are investments in the community's future. *The principal value of Community Peacemaking*

Circles cannot be measured by what happens to offenders, but rather by what happens to communities.

As yet, there is not a widespread appreciation of the value of community justice initiatives. New community justice initiatives attract an exacting scrutiny from the public, from academics, from government and from the media. In assessing the work of community justice, the public, the media and justice agencies do not take into account how much communities accomplish with so little; they simply focus on failures. Impressions of community justice based on a few notorious failures are rarely offset or balanced by the numerous but not widely known successes of community justice. (Further, critics of community justice fail to consider how the same offender who reoffends after a Circle, has in the past repeatedly re-offended after many trips through the formal justice system. They expect the community justice system to succeed on the first try, when the formal system has failed many times.)

By reducing demands on justice services, by reducing recidivism, by enhancing preventive capacities within communities and by supplementing justice services, community justice initiatives can significantly reduce justice expenditures. These savings can more than cover the financial support needed by community justice initiatives.

Reallocating Current Public Investment in Justice

Not more funding, but a reallocation of existing justice funding is required to enable community justice to realize its potential. Adequate funding for community justice will improve the ability of formal justice systems to realize their objectives.

Without adequate funding, the proven success of community justice will be lost as volunteers burn out and as government departments relentlessly assume greater responsibilities over the lives of individuals, families and communities.

The justice system continues to make piecemeal changes without any overall comprehension of the secondary impact of these changes, and continues to submit to government and the public that if they had more funds they would do better.

Our justice system desperately needs a comprehensive diagnosis of the overall transactional costs of excessive reliance upon formal justice services, and of what conflicts are best handled within and what disputes are best handled outside formal justice systems. Until such an assessment is made we will continue to fail to appreciate the significant contributions community justice can and must make to community well-being, and thereby fail to make prudent investments in community justice.

Need for an Overall Community Justice Process

To realize the enormous benefits of community justice, there must be a *complete community justice system functioning alongside the formal justice system in each community*. Currently different parts of a community justice system exist in many communities, but no community has a full complement of community justice services stretching from prevention to rehabilitation. Community Peacemakers, diversion, victim-offender reconciliation, Healing Circles, Family Conferences, Sentencing Circles, Healing Camps, safe houses, community back-up, community treatment resources, Community Justice Workers and Community Justice Committees – if co-coordinated as an overall system – can provide a full community justice system.

Community justice must not be just a series of ad *hoc add-ons* to the formal justice system, but can and should exist as a *co-ordinated overall community* justice system. An overall community justice process can provide a full complement of prevention, intervention, rehabilitative and dispute settlement services. Further, a full community justice process can partner with formal justice agencies at each stage in a formal justice process. If all the elements of community justice are available and co-ordinated through a community justice committee, the full potential of a community justice process to reduce the financial and social costs of crime, to reduce reliance upon professional resources, to complement and reinforce the formal justice system, to advance community well-being and most important, to engage and empower individuals, families and communities to take greater responsibility, can be fully realized.

New Perspectives Required

Two important changes in perspectives could make huge differences in lowering the exorbitant costs of professional justice services, could profoundly enhance the abilities of families and communities to take on greater responsibilities and work more effectively with justice officials - and most importantly could improve the well-being and safety of our communities.

1. Justice Agencies must recognize the mutual advantages in sharing their resources and power with families and communities.

2. Families and communities must recognize they *cannot* leave the business of dealing with crime and conflict to the state if they want to protect their families and live in safe communities. They must recognize the need to become involved and that their involvement can make an enormous difference.

Many necessary changes would fall easily into place if both communities and justice agencies appreciated and acted upon their collective potential to advance the well-being of our communities. There is a crucial role for community justice partnerships if the will to make it happen grows among both parties.

The circumstances producing crime are rarely simple, rarely involve only those the law defines as offender and victim. Circles are more capable of handling the polycentric relationships and issues surrounding the causative factors of crime. Courts ideally suited for addressing who did it, are less suited to addressing what to do about it - especially to work through the multi-layered interactions within families and communities that influenced what happened and influence what can be usefully done about it.

In closing, one thing must be clear. My criticism of our justice system is not that it does not work - but that it is given too much work to do - too much work that could be carried out more effectively by other processes. If the criminal justice system had less to do, it might do much better at what it was principally designed and best suited for – handling the crime that families and communities cannot – and provide an alternative to, or a support for community-based justice initiatives.

What is the Future of Community Justice?

You can decide. All of us are a part of many communities.

COMMUNITY JUSTICE
AN OVERVIEW OF SOME ADVANTAGES

BUILDS COMMUNITY

- Develops:
  - Community resources for prevention and healing
  - Conflict resolution and participatory skills
  - Connections to community (offenders, victims, all others)
  - Better relationship
  - Respect and understanding within community
  - Ability of individuals, families and communities to take more responsibility for resolving conflict
  - Community self-reliance

IMPROVES SERVICE DELIVERY
- Faster response to problems
- Co-ordinates community, government and family resources
- Sensitizes solutions to local conditions
- Addresses causes not just symptoms

REDUCES
- Recidivism
- Dependence upon government
- Costs
  - Changes investments from:
    - Processing crime to healing individuals, families, communities
    - Professional to community resources

BROADENS BASE OF COMMUNITY INVOLVEMENT

Appendix A

First Steps in Community Justice Partnerships

> ***"Communities must do their own moral work."*** **(Hans Mohr, Howe Island, 1994)**

What Not to Do

> *"We've been waiting too long for this - we don't need to meet - we need to start - like today - we're ready - we'll learn as we go."* (Carcross Volunteer 1992)

And so we did "learn as we go". In struggling to forge a partnership between communities and justice agencies, in exploring how families and communities can retain ownership of their issues in building a community-based consensus approach to conflict, Yukon Community Peacemaking Circles grew through trial and error.

The Yukon experience provides many important insights on what works and what does not. I take full blame for the early mistakes, and acknowledge that the corrective measures nurturing and expanding Circle processes belong to the community.

For the most part, mistakes were our most important guide. Communities had the courage to try, the humility to acknowledge their mistakes, and the commitment to persevere. Their vision to heal their families, their community, carried them past frustration, failures, indifference and opposition from all quarters.

What they found did not work is as valuable as what they discovered did work. Both are their legacy to others and the building blocks of their road to community empowerment and community well being; one cannot exist without the other.

From the outset, until now, Yukon Community Circle process, in shifting the sentencing process from courts to communities, from a rights-based adversarial process to an interest-based consensus process, and from an exclusive professional ownership to a shared community-based partnership has been carried out without changes to legislation, to administrative or financial arrangements, and without co-ordinated support from justice agencies. It has evolved on its own momentum. Advancing on the energy of those who shared a vision of empowering families and communities, Community Circles have demonstrated the flexibility within the formal justice process and the inordinate potential within communities to make a difference.

While much is left to be done, after five years I feel confident in saying that despite the hardships communities encountered, they have succeeded beyond anyone's

expectations in making significant differences in the lives of many individuals, and in their community.

With equal confidence, I can say no-one should follow our evolution. Beginning without a plan, without financial, administrative and often without moral support from professional agencies, places an inordinate drain on volunteers. Most of this appendix draws upon the wisdom of hindsight. We learned as we evolved. We made mistakes others can avoid by not starting with so little, and by not following *all* of our path. What is set out in this Appendix reflects the best of what we tried, and what many now consider we should have done. This discussion invites the reader to constantly question what is appropriate for their community - and how they might find an easier, better way to enable families and communities to retain significant ownership of their issues, their conflicts.

The Yukon First Step

Initial discussions about the notion of Circle sentencing with most professional justice officials revealed a deeply ingrained belief that crime, especially any significant crime, could only be handled with the expertise they possessed. These discussions and past experiences with introducing new initiatives in years gone by, reinforced my conclusion that absent any practical experience with a Circle, the “but ifs”, and litany of imagined horror stories churned out by professionals would preclude any substantial change to the status quo.[28]

Conversely, similar discussions within communities about empowering offenders, victims and others within the community to change the process and result of sentencing revealed their readiness, even eagerness to try an alternative to their dependence on professional justice resources.

The experiment with Circle sentencing began too suddenly. It began when a Crown in a remote community submitted that the community wanted an offender sent to jail. Based upon the trial and other information provided for sentencing on several offences before the Court, I could understand why. After a full-day trial involving this offender, the plane waited to take us home while I adjourned for a harried few moments to compose a sentence that would give the community its wish. His long record for many offences both minor and serious, his current offences, and the complete absence of any positive prospects for rehabilitation, combined to justify packing the offender off to jail for a year or more. I didn’t.

Where was his family? Did he have any friends? Why did the community want him out? No one but the Crown, who didn’t live in the community, had advanced this request. I was not suspicious that the request was fabricated, but was curious to hear from the community. I realized most of what I knew or thought about the offender came from people who didn’t live in the community. Any gaps in my understanding were filled in by the usual assumptions the experience of being a judge readily provides. I did not have the input of the people who knew him and who would be the most directly impacted by

the sentencing; his community, his family and his friends. I certainly didn't know what they thought might happen when he came back to the community after I had done "my job" of sending him to jail for a year or more. What could we do then, but wait until someone suffered at his hand in a manner that enabled the justice system to once again legally remove him from his community? The futility, expense and insensitivity of mindlessly, and without direct community input, sending the offender yet again to jail pressed me to do something else.

The first Circle was set down for the next month.[29] From this Circle, other communities asked to try. It spread too quickly; grew too fast. In some communities, only a small portion of the non-Aboriginal population participated. The initiative came chiefly from Aboriginal people whose lives were the most entwined in the justice system. Over the next five years, what was skipped over at the beginning had to be built in. This is not an ideal way of generating community justice partnerships. However, Yukon communities that grasped the opportunity to make a difference, did make a difference and in doing so, demonstrated the value of empowering communities to take responsibility for the conflicts surrounding crime. Their pioneering work moved the debate from whether a Circle should be tried, to how a Circle process can be effectively developed. The initial communities did it the hard way, hopefully creating the opportunity for others to find a more reasonable route to establish community responsibility.

Overview of First Steps

> "*Each community must follow a different trail, their trail. Everything they do, they need to do,"* (Mark Wedge, Carcross 1992)

The suggestions in this paper derive from many sources, from community justice and community development experiences in many other jurisdictions, from unsuccessful and successful Yukon community initiatives, and from my evolving appreciation of what those on the receiving end of justice services (victims, offenders, families and communities) experience. From all of these sources, one salient observation dominates all others - *there is no golden path, no fool proof formula to successfully launch a community justice initiative*. The struggle facing each community will be dramatically unique, different circumstances, problems, resources and aspirations of each community defy constructing a universal "cookie-cutter" approach that can usefully embrace the conditions of each community. In some communities, the catalyst for action may be a tragic, riveting incident, a build up of frustration, or a determined group of people may emerge to make something happen. The police, Crown or others within the justice community may be supportive, indifferent or opposed. How justice officials respond profoundly affects the magnitude of the struggle, and shapes the design and scope of the community initiative.

Each community faces unique challenges, obstacles and opportunities that the collective experience within a community will best know how to address.

The following “first step” suggestions are not ranked in any priority. Nor do these suggestions pretend to be an exhaustive list of important first steps.

Public Meetings

Many public meetings using different formats at different junctures along the road to establish community justice options may be necessary.

Comment

Let us get something straight from the outset. When speaking of meetings, I am not talking about the usual disastrous formula for “public meetings”. This is a meeting with the public. It must be organized to make people feel a part of the process, to act as participants and to accomplish something. The many variants of “Open Space Technology”[30] or other methods of facilitating meaningful interaction and participation should set the format for this meeting with the public. What must not be done is to simply arrange several speakers to “talk at” an audience and hope for questions at the end. Since the project will involve the community in a participatory consensus process, the first meeting should reflect these principles in its organization, content and process. Community partnerships based upon full participation in a consensus process must walk their talk from the beginning.

The first meeting may be by invitation only to a number of key community leaders from all sectors of the community. This meeting of key leaders can spread the responsibility for developing initial methods to reach all the community.

A first public or invitation-only meeting may be best held after a Community Conflict Resolution Course. The course will advance many of the educational objectives necessary to motivate public participation. The course can galvanize an informal core group within the community to take the initiative in establishing a Community Justice Committee, or in planning the first public meeting.

Before a public meeting, a series of informal small meetings in the community may generate community leadership in building a community justice initiative. The spirit and fact of ownership should be present from the very beginning of a Community Circle process.

Comment

If justice partners are invited to be an integral part of commencing and building community justice, and if they understand in advance how community justice can work, the potential for their active support can be effectively engaged. Pre-implementation planning can avoid unnecessary opposition from some quarters of the justice community; especially

opposition derived from not being fully consulted about changes to "their system". If involved, justice officials are more likely to realize how their interests enormously benefit from a community-based system of processing conflict.

Purpose of First Public Meeting

- *Enhance Public Understanding of justice Expenditures. Accurate information about all aspects of justice services is vital to beginning a new partnership*. The public does not appreciate the actual cost of justice services, nor what current and future sacrifices in other public priorities will be necessary to maintain existing state responses to crime. For the public to effectively assess the value of their current investment in justice agencies they need to know how much they are spending and what results they get from their investment. The failure to appreciate how much is spent and what the investment produces, significantly contributes to lull the public into supporting more spending on the same programs each year. Appreciating that pumping more public funds into justice agencies means that more public funds must be drained out of education, health, social services and economic development, will prompt a closer scrutiny of public support for current levels and patterns of justice expenditures, and provoke a search for more effective, less expensive alternatives. The information must be presented in an understandable and accessible manner.

  Comment

  The exposure of justice costs and results can be and must be done without blaming any individual or any justice agency. The problem lies not with any justice agency but rather with the unrealistic expectations the public places upon professional justice officials and their agencies. In building the community-justice partnership the "high road" must be taken. Nothing is gained by faulting the justice agencies for what they do, nor the community for what it doesn't do.

- *Identify Specific Community Profile of Crime*. The actual profiles of crime and criminals in each community are often quite different than popularly supposed. Clarifying these profiles will reveal the need for a broad range of responses, and especially of the need to connect with non-justice agencies in crafting effective solutions.

- *Describe and Explore Community Options*. Describing how communities all over the world have developed community-based programs that significantly advance community security and well-being can be instrumental in motivating people to become involved. Knowing that an empowered community can make a significant difference encourages involvement.

- *Extend Base of Community Participation and Support. Everyone must be encouraged to participate*. To engage the entire community, special efforts must be

made to involve a cross-section of business, religious, educators, health, non-profit and other civic leaders. From the outset, a broad base of public awareness and support can avoid unnecessary opposition, precipitate constructive inputs from many different quarters and create the impression and fact that the community initiative emanates from *all* the community.

Advertising helps - but personal contact works more effectively to bring out key people. Meeting with service clubs, religious groups, business associations, and non-governmental organizations to solicit their involvement immeasurably assists in drawing out participation from many different quarters.

- *Ensure Community Ownership. Public meetings should be held before concrete and detailed plans have been made for a specific community initiative*. Initial public meetings should not be used to announce a community program, but rather used to open discussions with the community about what initiatives might be taken. Public meetings can, by galvanizing community actions, foster community ownership.

Logistics of Public Meetings

- *Time and place* should be carefully selected to ensure maximum community participation.

- Since a lot of ground will be covered at the public meeting, simple *handouts* – point-form summaries of key information – could be distributed before the meeting.

- *Names of key contacts* for follow-up should be circulated as well as information about *relevant community courses* on conflict.

- Two experienced *facilitators* to pilot the meeting will make a big difference in how much is accomplished. At least one of the facilitators should not be a justice official.

- Several people from different sectors of the community should be asked to cover specific objectives.

- The meeting should encourage as much interaction as possible since building new networks within the community is a principal objective. *Small groups and open space technology methods should be utilized to enable all to effectively participate.*

- Meeting in a Circle and using Circle Guidelines to facilitate discussion marks a good start for Community Circle initiatives.

Community Conflict Resolution Courses

> *"Learning together - especially sharing our experiences, our fears - and what we want as we learn - helps us understand each other - makes it possible to one day work together."* (Barb Hume, Haines Jct., 1994)

For the most part, the public has been conditioned to depend upon justice agencies, and many are intimidated by the complexity of justice procedures. A three-day community course on conflict resolution can reveal the significant contributions lay people can make to their communities. Community courses can galvanize lay and professional people to become involved by revealing the need to become involved, how to become involved, how their involvement can make a difference, and especially how they can work together.

a) Who Attends?

The success of most community justice initiatives is directly related to the diversity of community support. Efforts must be made to engage a broad cross-section of the community. Relying on public announcements is not enough. Key people from each sector should be identified and actively recruited to attend. Service clubs, sports and recreational groups, churches, the business community, professional groups, unions, local political bodies, cultural associations, all manner of organizations in communities, should be canvassed for interest as all have something essential to contribute.

Valuable contributions to community justice often come from the very people causing problems. They know what must be done to make a difference.

Who initially attends the course will significantly influence who will initiate, operate, and support a community justice project. The richer the mix of age, culture, ethnic origin, experience, social and economic class, the more likely a community project will be widely accessible to all, and develop the new community networks necessary to sustain a partnership between the community and formal justice system.

> **Comment**
>
> *Joint training sessions involving justice professionals and community volunteers generates common vocabularies, a common knowledge base, and an opportunity to formulate common objectives and expectations. The shared experience of training can foster better understanding, communication and respect, thereby building better relationships. Joint training sessions can plant and nurture the seeds of a viable community justice partnership. Professional justice officials benefit by learning about the community, introducing themselves to the community and from learning mediation and consensus-building skills.*

Personal Contact

Personal contact can be necessary to remove public perceptions that only professionals can or ought to be involved in handling criminal justice matters. These perceptions can hinder lay interest in a course designed to encourage their involvement. These perceptions often can only be changed by personal contact.

Who Recruits Participants?

Court workers, probation officers, Elizabeth Fry or John Howard Society members, substance-abuse counsellors, any number of community volunteer organizations or local people working in the justice system can effectively recruit community participants. The best team of recruiters includes people from within and without the justice system … but recruiters must have a good understanding of the essential need and value of community justice, for they will encounter a litany of reasons for not becoming involved.

Course Outline

A brief written summary of the course, setting out its objectives, content and benefits can be helpful. Course summaries indicating how the skills of peacemaking, mediation and other consensus-based processes can be applied in the home, neighbourhood, workplace and within communities can be useful in attracting a broad cross-section of people.

b) Who Are the Resource People?

At least two people from the local community and someone from the justice community should "team up" to teach the course together. Reliance *solely* upon someone from the justice system can create the impression community justice is a "government" inspired attempt to extend the reach of government agencies. While the course indirectly benefits government agencies, the course must primarily promote self-help, and self-reliant capabilities to manage conflict within the community.

Engaging lay people to teach methods of resolving conflict helps to debunk the current myth that only professionals can "handle" conflict or respond to crime.

A resource team, including at least one professional justice official, advances the notion of partnership and of the genuine desire of some professionals to break down their monopoly over responses to conflict. Many justice officials seek to genuinely share responsibilities for achieving a better level of social harmony and justice within communities.[31] Sharing the responsibility to provide community courses marks a good beginning towards this objective.

Spreading responsibilities among several people for teaching parts of the course incorporates different perspectives and teaching styles.

c) Where?

Care should be taken in selecting the site for the course. Twenty to thirty people will be spending up to eight hours a day together for three days. Many will be strangers to each other. Ideally they will come with a wide range of experiences and perspectives. The course, in addition to sharing new information, aspires to build new partnerships, build new bridges. The space for making all this happen can be crucial.

No, certainly not the Court House. Preferably not in any government building, except perhaps a local school. The place must be comfortable to the community, one they can all call a “community home”.

There must be a few breakout rooms and spaces that foster informal discussions. Coffee and health breaks, all informal times, will do as much in building new partnerships as anything that happens during the course.

Finding a place just out of town, away from phones and the constant temptation to plug back into the world beyond the course can help concentrate attention, generate a more constructive learning environment, and contribute to a collective identity as a group.

Take time to pick the “right” space - it is important.

d) How?

How information is shared and taught can make or break the course. Participants will range from people with highly developed literacy skills to the semi-literate. Formal education, experiences with the justice system, with conflict, and personal experiences in home and work environments will all be different - vastly different. How the materials are taught and shared must not embarrass, intimidate, insult or bore. A tall task. A task that must be carefully considered and imaginatively tackled.

Taking time in planning course content and presentation, taking time to consult with the community and with adult educators in order to match the structure of the course to the community, can make a difference in building partnerships during the course for community justice initiatives. The following suggestions for developing the courses are extracted from Yukon experiences.

- *Minimize reliance on written materials*.
- *Use simple, clear language* and avoid professional jargon.
- Provide salient *summaries.*
- In both written and oral presentations *use stories* to illustrate key points.
- *Videos* can illustrate the overall justice system, mediation, consensus building, Circles and other processes in a manner that entertains and educates while injecting an important sense of reality.
- Emphasize *learning-by-doing* through demonstrations and role-playing, to achieve a practical understanding quickly and promote a lively exchange among participants.

- Break out into *small groups* as often as possible.
- *Slow down*. Allow, encourage and stimulate questions - lots of questions.
- *Build teams* for doing homework and other projects within the course. Generate as many activities as possible that call upon participants to work co-operatively.
- As teachers and resource people, be open to learning, to *encouraging others to share in teaching*. All participants have illuminating experiences and observations to contribute.
- Build into all materials, discussions, demonstrations and role playing, as many *locally based examples* as possible.
- Provide frequent and ample opportunities for *informal contact*. Coffee and health breaks can be important learning opportunities and can initiate new networks among participants.
- Resource people should *mix with participants* during informal breaks.
- Create an atmosphere of *informality*.
- All resource people should be *readily approachable*.
- Avoid grading or any comparative evaluation. Ensure everybody is aware if they attend they pass. What participants get out the course is a combination of what they and resource people jointly and individually contribute.
- *Use humour*. Find ways to incorporate humour - especially at your expense - never at the expense of others.
- *Make it fun.* There are many exercises to get people engaged, break down barriers, make people laugh and highlight important principles.
- *Debrief.* Take time to review role plays and discussions to draw from participant's experiences.
- Provide *simple written summaries* of all key aspects of the course for review during and after the course. Handing out too much written material before the course may scare off those who have minimal literacy skills but possess inordinate inter-personal skills essential to consensus processes within communities.
- Schedule time for participants *to meet with resource people privately* at the end of each day. Getting a sense of what is working and what is not assists in adapting the course on a day-to-day basis to the needs of participants.
- *Be flexible*. Do not religiously stick to a course script, especially if the dynamics of the course call for changes. Remember the course belongs as much, if not more, to participants as to resource people.
- *Reviews.* Schedule a follow-up or review within 4-6 weeks of the course. Many questions will arise after the course. Setting down a fixed time for review gives participants an incentive to take their questions seriously and to pursue their interests in gaining a deeper understanding of the ideas introduced by the course. A review is particularly useful in harvesting all opportunities to precipitate new community initiatives.

e) When?

Community Conflict Resolution Courses should be available *before* beginning any significant form of community justice initiative.

The course impact on knowledge, on the working relationship of partners, and on skills can profoundly enhance the prospects of the partners surmounting the difficult, numerous obstacles confronting any new community justice initiative.

f) What? - The Course Content

Introducing new concepts of managing conflict within the home, workplace, neighbourhood, schools and generally within the community is ambitious for a three-day course. However, the course should not cover new ideas in great detail, but aspire to instil an appreciation of the dynamics of different conflict-resolution processes based upon peacemaking and consensus principles. The objective of the course is not to transfer skills in any particular method of conflict resolution, but to inspire an interest in pursuing new skills and to generate an appreciation of how consensus-based processes can enhance the ability of individuals and the community to deal with conflict in all quarters of community life. This can be done, but to do so, the almost irresistible urge to immerse participants in the details of any process *must* be repressed.

A working level of skill in any of the processes introduced by the course can be acquired in follow-up courses that focus on a particular skill. This introductory course aspires to whet the participants' appetite for learning new skills, and to inspire them to assume greater responsibility for handling conflict within their community and families. The following objectives should predominate in designing the course:

Enhance Awareness About

- existing formal justice processes for processing crime, child protection and minor civil matters;
- First Nation practices and values;
- alternatives to formal process, based upon peacemaking, mediation and consensus building skills;
- how individuals and families can take responsibility for handling conflict;
- what a difference individuals can make to community well-being by becoming involved;
- how to deal with conflict in a "good way" within oneself, within families and within communities.

Illustrate How Individuals and Families Can Be Empowered To

- respectfully resolve their conflicts;
- take responsibility for conflict within their families, workplace and communities.

Promote

- enlightened public dialogue about responses to conflict;
- new partnerships between community and formal justice agencies and among government agencies;
- holistic, community-driven approaches to conflict;
- respectful intercultural communication.

There are many different ways to arrange the content of an introductory course to meet these objectives. Each community circumstance will call for a unique combination of materials, or for a different emphasis.

Summary

The course can generate many of the building materials for a community justice initiative. The following steps toward a community justice partnership can be gained from this course:

1. Enhancing Community Awareness

Good news in criminal justice rarely travels far or effectively. An awareness of numerous successful community-based initiatives within Canada and within other jurisdictions rarely reaches the grass roots of Canadian communities. Current community frustration with existing justice processes prompts people to want to do something about it. Most don't know what can be done.

Some communities seek tougher measures and encourage public investment in harsh sanctions. Some seek to redress the social conditions fostering crime and prompt public investment in healing and rehabilitation programs. There are no simple answers, no universally "right" answers to crime. Each case, each situation is different. Discovering what mix, what blend of approaches will work cannot be determined without involving the community. All of us suffer when we fail to share in responding to the challenges crime poses to our communities. Crime is not a legal problem, it is first and foremost a social problem.

Introducing examples of First Nation peacemaking and of other community-based justice programs can stimulate the imagination of many who desire to become involved. Presenting materials about community-based initiatives, is not intended to prompt replication, but rather to demonstrate what communities can do.

The course serves to *reveal* and *advance* common interests in community justice initiatives, and significantly enhance public awareness of what the justice system can and cannot do. *It is in the best interests of the formal justice system for the public to be fully aware of what public justice agencies can and cannot do. Unrealistic expectations serve no one's best interests.*

2. Introducing New Skills

As a consequence of a long standing dependence upon experts to manage conflict, skills within communities to participate in resolving conflict have atrophied. The course introduces consensus-based conflict resolution skills and can inspire participants to reach within and beyond their community, to pursue further training, and to develop alternatives to the adversarial processes of the justice system.

3. Generating New Networks

The necessary networks to build partnerships within communities between professional agencies and lay people at all levels, especially at the grass roots, often do not exist. Similarly, among different groups within communities, the contacts to bridge differences in ways that generate opportunities to work together are either non-existent, too weak, or too negative to mobilize constructive, collective action.

Especially during the last day of a three-day course, informal discussions usually emerge among participants about what they might do within their community to redress problems they identify. The collective experience, resources and abilities of participants and their common desire to make a difference, give each person a sense of being able to achieve together what they previously believed was not possible acting alone. These courses can prompt the beginnings of community justice committees, and other community driven initiatives.

4. Galvanizing Individual and Community Involvement

Not all initiatives prompted by the course need to or do lead to Community Peacemaking Circles. The course can coalesce interest and convey key information necessary for the community to begin designing their own community process. Gaining access to new skills, new networks, empowers individuals to be more effectively engaged in problem solving within their families, neighbourhoods, workplace and larger communities. By increasing the participatory skills of individuals, many barriers to respectful exchanges, and to working co-operatively in many sectors of community life are removed.[32]

Sharing individual stories, values and experiences is a vital part of the course. Opportunities within the course must be created for participants to learn about each other, to gain new respect and understanding for their differences. Understanding the "total context" of a person is as important as understanding the issues.[33] This understanding must exist among those pioneering the development of any community justice project. The course can mark the beginning of a shared journey of learning how to work together, to build self-reliance, and to do so deeply respectful of the unique contributions each can make to community well-being.

Training Professionals

Police, Crown counsel, judges, probation officers, social workers and others who are community-based, community minded, and appropriately trained for community work, are particularly crucial to the success of Peacemaking Circles. Without state officials who appreciate the advantages of community partnerships, and are trained to work in communities – would-be community-justice pioneers face a frustrating, almost impossible task in establishing and maintaining a community process dependent on a partnership with state agencies.

As well, a broad cross-section of line and managerial professionals need to be acclimatized to community justice concepts and to working *within and with* communities. Professionals often encounter more difficulties than most community members in adjusting to working within a community-based partnership.

To maximize the potential of a community partnership, courses on community justice are essential for professionals. These courses should as much as possible include the following.

- Representatives from all agencies.
- Senior managers as well as professionals working in the field.
- Instructors from within and from outside the professional agencies.
- Adequate time for more than a superficial treatment of the subject matter.
- Community members, or the staff of community justice projects.

The training courses for professionals should cover these matters.

- Empirical evidence depicting the benefits of community partnerships.
- The underlying concepts of community justice.
- Working examples of the structure and operation of a wide range of community justice initiatives.
- Cross-cultural training.
- Peacemaking, mediation and consensus-building skills.

Training professionals to work in a community partnership must include how to work with the community in a manner that affords proper respect for community input.

If senior mangers fail to understand and support community justice initiatives, the partnership will be little more than window-dressing - and will not survive. Support from senior managers must include policy directives that reinforce community justice, adequate resources for training, and taking time to be intimately aware of “what is going on”.

There are many professionals with decades of experience, who fervently believe in community justice. They should be engaged to “kick start” training for their peers as

their personal stories can strike at the heart of concerns that may be raised by other professionals.

Ideally, courses for officials should pre-date the handling of any cases within the community justice initiative. Annual courses should bring together professionals and community members to enhance their skills and knowledge, to share their concerns, and to improve relationships within the partnership.

Annual training is especially important as professionals working within communities are constantly changing. Professionals lacking an understanding of the community process – especially if they are unaware of how the process serves their personal and professional interests – can feel threatened by and undermine community justice processes either by their indifference or opposition.

In many jurisdictions, some professionals unfortunately and erroneously view community justice as a threat to their interests. The shift in power, in funding, in approach precipitated by community justice can be interpreted as a denial of their philosophy, of their training and a direct threat to their job. Driven by such fears, some professionals actively or discretely oppose or try to sabotage community justice initiatives.

Training sessions play an important part in changing attitudes and in avoiding unnecessary opposition by demonstrating how community justice initiatives can personally and professionally benefit officials from all agencies

Training Volunteers

Training for volunteers enhances the quality of their contribution and provides a small token of appreciation for their contribution. Training enables volunteers to gain the competence and confidence necessary to be equal partners and to assume responsibility for difficult work. All volunteers must be able to access free courses on the following topics.

- Advanced peacemaking, mediation and consensus building skills.
- Specific skills required to work with and assist victims or offenders.
- Knowledge of criminal justice processes (especially for volunteers working as Justices of the Peace or helping court workers, Justice Co-ordinators, police and probation officers).
- Anger management, life skills, upgrading, substance abuse, parenting and other courses designed to help counsel or work with people in trouble.

These courses should be offered on a regular basis and if possible be provided in a form that can be recognized and credited by schools, government and professional institutions.

Comment

Many volunteers are engaged in their own healing path. In most communities, there are not enough volunteers who have completed their healing. While it is important for volunteers to have worked through most of their own struggles, and to avoid unloading their problems on those they are assigned to help, it is equally important to recognize helping others makes an immense contribution to their own healing. Working in teams, with volunteers who have moved beyond their emotional and spiritual ailments, helps avoid the downside of "messed-up people being placed in the hands of other messed-up people".

Community Justice Committee

Establishing a Community Justice Committee from the outset immensely assists in several important areas.

- Securing community-based ownership and direction.
- Establishing an effective working relationships among all partners.
- Providing leadership and support for the community justice initiative.
- Acquiring local and other resources needed for each case.
- Responding to media, general public and government agency inquiries.
- Recruiting a rich variety and supply of volunteers.

In the absence of an active community justice committee, a community justice initiative will struggle and may encounter insurmountable difficulties in growing beyond a very limited range of functions.

Some committees include professionals either as members or as resource people. As members, professional partners seem to take more interest, and invest more of their time in a community partnership.

The holistic focus of most community justice initiatives recommends engaging officials from all affected sectors of government (education, health, and economic development) and from all quarters of the community (business, spiritual, cultural, and recreation). They may not all be members of the justice committee, but they should be engaged in some manner with the committee.

Inter-Agency Advisory Committee

Even if local officials participate in, or are members of the justice committee, another committee of senior managers from all relevant government departments is essential to maintain effective co-ordination among all major participants in the partnership. This committee should include community representatives and the directors of the community justice project.

Unlike the community justice committee, this Inter-Agency Advisory Committee has no line responsibilities. They can meet less frequently, perhaps every two months and even less once the community initiative passes through the difficult start-up period. An advisory committee can contribute the following:

- a forum for leaders from the private and public sectors to meet and keep abreast of developments;
- a sounding board for issues raised within the partnership;
- another avenue to bring in the larger community, and to access their support;
- an ability to identify community resources (e.g., businesses willing to donate training or provide work experiences for young people, and funding opportunities, or people with valuable skills);
- support for line workers among senior managers;
- faster responses to resolve problems, to anticipate and avoid problems, and to co-ordinate resources and policies in advancing the needs of a community justice project.

Senior managers, by being involved at the outset, particularly in setting priorities, in identifying resources, induce a commitment and sense of shared ownership in community justice. However, all senior mangers *must* avoid the often irresistible urge to impose their agendas on the community. *Their role is to help the community identify what the community wants to do - not to get the community to do what they want.* In the long run, by assisting with communities', priorities, all agencies will benefit immensely, whereas pressing their priorities upon communities will ultimately dissipate community involvement.

Especially during the initial planning and organizing of a community justice initiative, senior managers either individually or working through an Inter-Agency Committee, can make a vital difference in the successful launching and operation of community justice. By helping the community identify resources that can be made available, realized, or tailored to be used within community justice processes, by informing, encouraging their line officials to co-operate and support, by making it possible for line officials to work with the community (reducing their existing workload, giving them time to spend in communities, etc.), by participating in and funding training for community justice, and generally by bringing to bear their collective managerial expertise, senior managers can vividly demonstrate their value to the partnership. There is ample flexibility in the programs and funding of all line agencies to make the partnership work - if there is a will to do so - a will to do so. Always arises when a full awareness of the direct benefits to all justice agencies following from community justice partnerships is fully appreciated.

The Media

Consideration should be given to including a representative from the media on the Inter-Agency Advisory Committee. If media representatives are excluded they will continue to hold community justice initiatives to a much higher standard than they exact of the

formal justice system, and their coverage of community justice initiatives may be superficial and focus on failures, or on any controversy that arises. Negative coverage of community initiatives can undermine public support and encourage politicians to continue tolerating the long-standing known problems of the existing process, rather than support something new that risks controversial media coverage.

Comment

Perhaps due to inadequate time and resources to probe beyond the surface, perhaps because they lack knowledge of what really happens within the justice system, or perhaps because they believe their coverage of crime tells the whole story, the media (with some wonderful exceptions), tend to overlook the costs of excessive dependence upon the state justice resources, and tend to be unaware of the successes families and communities have struggled to achieve. Excluding the media from community justice initiatives will perpetuate what is wrong about media coverage, and forego the opportunity for the media to effectively promote a vital public discussion about justice issues.

All media are, and warrant being considered a vital part of the community. They can make a valuable contribution to their community and should be included in the partnership. Given a chance, given the trust of the community, they can assess fairly and inform the public about community justice. There is nothing to hide and everything to share with pride in the struggles of families and communities to assume responsibility for crime and conflict in their midst. If community justice initiatives desire the media to be fair and responsible, they must be treated fairly and with respect. The inherent principles of the Circle process, championing respect and inclusion, must apply to everyone, including the media.

Moot Peacemaking Circles

A role play of different cases can build confidence, avoid setbacks, hone the steps and guidelines within the process for all participants, and clarify key ideas and concepts. At least one role play should track the entire process from an offender's application through the preparation stages, to the hearing and follow-up reviews. All stages of Peacemaking Circles are equally important. Too often too much emphasis is accorded to Circle Hearings. A role play of the entire process underlines the importance of all stages.

Role plays enable all participants to make constructive contributions to developing the process. For example, trial co-ordinators and court clerks have an important interest in how and when Circle Hearings are set, and can make vital suggestions to facilitate the scheduling of hearings and reviews. Crown and police can gain vital insights into how decisions are made within the community process.

An annual Moot or role play of the entire process can be informative to new participants as well as providing an important opportunity to review and improve the process.

Peer Mediation

Developing courses and programs for youth to engage in peer mediation in schools and in the community introduces the basic principles and skills of interest based consensus processes. Immediate and substantial long-term benefits for a community justice process flow directly from the knowledge, values and skills youth acquire through peer mediation.

A Circle process solely for youth, administered and run by youth can be an invaluable part of community development and in most cases will be more successful than processing youth through an adult-dominated process.

Youth are a vital part of any community and should be encouraged, supported to participate on community justice committees and in all aspects of the Community Circle process. What they contribute to, and what they can gain from participating in the Circle process can have significant immediate and long term benefits for community well-being.

Community and Staff Meetings and Retreats

Staff meetings on a regular monthly basis serve to redress internal friction, re-assess priorities and sustain good working relations. Regular meetings with all partners, directed to the same objectives and to improve the interaction of people and the co-ordination of services, keeps the partnership growing in a “good way”. Open-houses with the public several times a year, planned around celebration dinners or volunteer recruitment, assist in keeping the public informed, supportive and engaged.

Finally, retreats for both staff and partnership, preferably for two days at least twice a year, can be invaluable. These retreats (out of town) allow time for undistracted brain-storming about how to improve all aspects of community justice.

Without taking time to challenge and reconsider initial goals, to refine and redefine strategic plans, the initiative may not adjust in a timely manner to problems or to new opportunities. Especially during the initial stages of building community justice, taking time to incorporate the wisdom of trial and error experiences in a constructive, collaborative way is critical. It takes time to apply the lessons of experience.

Starting up - Start Simple - Start Small

The full blown Circle Sentencing process, complete with lawyers, judges *et al*, is best suited for more serious cases. *Communities should first build their confidence and skills by dealing with minor offences, first offenders and young offenders.* In such cases, for a

relatively small investment of volunteer time, resources, training and infrastructure, a significant return can be generated in changed behaviour of offenders and in improved results for victims.

Comment

In the Yukon I believe our failure to place more resources on youth issues was a significant oversight. For many reasons a focus on young people in trouble and in need would have yielded significant benefits to the community and secured a broader base of support.

The youth issues open direct access to working with, and strengthening families. Generally there is more immediate family support for youth, more willing hands in the community prepared to volunteer to work with youth. The problems youth carry are not as entrenched, generally not as serious as many adult problems. Youth are not yet as hardened to a life of crime, or as totally immersed in substance abuse. There are many more funding sources within and outside government for youth projects.

Above all other reasons, there is a desperate need now to respond to the needs of the youth. Younger and younger offenders are committing more serious crimes than ever before. If we fail to connect them to positive influences, fail to recognize their right and responsibility to participate in decisions affecting their lives, we will needlessly lose many - a loss we will all suffer. However, if community justice solely focused on youth, there would also be problems. To change the family environment surrounding youth, the needs of parents must also be addressed. Community justice, based on a holistic approach to healing, necessitates coping with all aspects of community needs. While special adaptations of the Circle process must be made for youth, the Circle should not ignore adults in beginning a Community Circle process.

Taking time to gain experience in diverting adult and young offenders who have committed minor crimes can enable a community to develop the skills and, perhaps much more important, acquire the self-confidence to do more both as a consequence of their experiences and as a result of growing community support.

Front-end justice diversions are an important complement to, but *not* a replacement for the Circle process. Front-end diversions may settle disputes, but they rarely resolve underlying sources of conflict or advance the individual and community healing targeted by the Circle process. Diversions help reduce justice costs, help keep people out of the formal process who should never be in it - but they do not deal with the more serious cases that are not likely to be diverted and that significantly affect the well-being of families and communities.

Moving too quickly to take on serious, especially controversial cases before community confidence exists or before the kinks and problems are worked out in the process can

impose burdens and pressures that the process may not be ready to handle. For many, the Circle process is a radical departure from the Court process. Only exposure to and experience with a number of Circles can remove the scepticism and wariness of its public and professional partners. Consequently, there are many advantages in starting with less-serious cases that fall within the comfortable confidence and skill level of participants.

Successfully dealing with minor cases gradually gains community support and removes both misinformation and ungrounded fears about how community justice functions and what it aspires to achieve.

Ultimately, community justice must *not* be restricted to minor cases. Communities must be able to do what they feel competent to take on within a community justice partnership.

Summary of Appendix A

May no-one see this paper as a plan for their community. Making your own plan, participating in creating something unique, lies not only at the core of achieving community well-being, but is central to ensuring the project fits the special circumstances of your community. In each community the first steps may be quite different. Some communities may believe several steps over several years may be necessary before handling their first Circle Sentencing case. Other communities may feel the need and find the resources to move within a relatively short time to take responsibility. Beginning immediately with an actual case as a kick-start is an option for some. Experience cautions against simply “jumping in” as a means of asserting community responsibility. Conversely, too much preparatory work can wear down interest, generate a daunting litany of imagined disasters that impose unnecessary restrictions, deaden creative energy or discourage taking any bold steps at all.

All community initiatives must develop principally by trial and error. The “adventure” shared by the founders in working through the challenges of developing community justice inspires a commitment to make it work and creates both the fact and sense of community ownership - an indispensable element of any successful community initiative.

There will be many surprises as communities work through the first few cases, some positive, some not. Commencing with a broad base of support, a clear set of guiding principles and realistic goals will help take advantage of the good surprises and constructively assimilate the experiences of bad surprises.

The emergence of strong support or opposition can never be completely anticipated. So much depends upon the dynamics of each case, on the inclination of local media or others to appreciate the larger picture of what the community aspires to achieve, or to appreciate how the same case might have unfolded within the formal justice system. Investing time with the media, business community, church groups and numerous other

agencies to seek their participation, input, and at least their understanding helps minimize the occurrence of, or damage caused by “bad surprises”. However, due to the unpredictable nature of events surrounding conflict, nothing can ever fully insure against the adverse impact some individuals or cases may cause.

The circumstances facing each community will determine what is useful, and primarily shape the path each community must follow in regaining responsibility for managing conflict. For many the path will be difficult, for all the path must be uniquely theirs.

Appendix B

Barriers to Community Justice: The Myths

Barriers to Community justice Initiatives

Perhaps the most difficult hurdles to overcome in building community justice initiatives are the current public myths about crime, and especially about how to respond to crime.

Myth #1 *All criminals are the same and require a punitive sanction, usually jail, to change their behaviour.*

Excessive media attention on heinous violent acts, on the horrible details of violence, induces a public abhorrence prompting calls for harsh punitive sanctions. This public call for punitive sanctions sweeps beyond the relatively few crazed acts of violence to encompass all crime. To develop a public appetite for community justice options, a better public awareness of what constitutes the principal workload of the justice system is essential.

A better public understanding of criminals and crime will reveal that most people who break the law are not hardened criminals and few of their deeds legally classified as crime involve a degree of moral depravity that would be generally considered repulsive.

Most people hauled into the criminal justice system are confronting troubles in their lives beyond their coping skills. Tragically, the “trouble in their lives” leads to “trouble with the law” and to the wholly inappropriate imposition of legal solutions for personal problems; solutions that generally compound the “trouble in their lives”.

Myth #2 *Only punitive sanctions work*.

In fact almost anything else works better if the ultimate objectives are to make offenders take responsibility for their offences, to reconnect offenders to families, to change offender behaviour into constructive law-abiding activities, and to make offenders accountable to victims and the community for any damages caused by their crime. If, as a society, we are more interested in creating safe communities than in unleashing vengeful impulses through harsh punitive sanctions, more thought must be given to changing and not simply punishing offending behaviour.[34]

Myth #3 *The public supports punitive responses*.

Politicians hear a public voice through the media and through many special interest groups clamouring for harsh penalties. Most of these public voices are raised in response to particularly violent crimes that constitute a small percentage of the cases flowing through the justice system.

Hearing these voices, politicians believe widespread public support exists for hiring more police, passing more severe mandatory sentences, and building more prisons. Certainly there is a public demand for harsh sanctions for heinous crimes, but this is not the only, or the most widespread public voice. [35]

Currently media coverage of crime has generated a widespread public perception that the failure of the justice system to successfully "combat" crime derives from inadequate professional resources - and a deficient will within the system to be adequately punitive. Crime would disappear, the media coverage implicitly suggests, if there were more police, more jails, more justice resources and an unswerving commitment to "nail 'em and jail 'em".[36]

While I don't doubt many initially react to crime by demanding punitive sanctions, experience suggests[37] that the more people know, the closer they get to the facts, the less they believe punitive sanctions will achieve their objectives. Those who come to the Circle intent on seeing punishment imposed, significantly if not dramatically change their perspective once fully informed and empowered to participate in decisions shaping outcomes.

In our families, stealing money from wallets, fighting among siblings, and vandalism in the home are certainly viewed as something wrong, but are rarely considered crimes, or the offenders treated as criminals. The closer anyone comes to understanding and knowing an offender, the more they acknowledge the need for healing and reparative remedies. While some actions indisputably call for incarceration, our current obsession with jail as a solution for most crimes is not what the public interest requires. Punitive sanctions have a place, but not the predominant role public investment now supports.

Myth #4 *Only professionals can cope.*

In the past century society has become inordinately dependent upon government and especially upon "professional" services to deal with conflict. This dependence has been encouraged by the burgeoning ranks of professionals and by the spreading reach of state agencies into realms where families and communities were previously responsible. In families or communities, we gave up too easily the often difficult responsibility dealing with conflict, with crime in our midst. Abandoning our responsibilities has atrophied our participatory and conflict-resolution skills, undermined our sense of civic responsibility, shifted us from seeking harmonious resolutions to relying upon adversarial processes. Many now believe we cannot cope - and are induced by the growing power and complexity of the justice system and by a public impression of increasing crime to deepen their belief that only "legal experts" can manage crime.

An increasingly evident, and growing cost of this dependence is the demise of families and communities as primary providers of social control and personal support networks. Processing conflict, taking responsibility for trouble within families, within communities is

an essential building material of families and communities. Not only can families and communities cope with conflict - they must.

Myth #5 *There's nothing the public can do.*

The complexity of the legal system, the cold, seemingly "too busy" nature of incomprehensible bureaucratic agencies "handling" crime, compels the public to conclude there is nothing they can do.

Public justice agencies have developed such complex procedures for wielding their inordinate powers that one needs a lawyer, not any lawyer, but only a lawyer expert in criminal law to successfully navigate complex justice procedures. These procedures are so complex that, even within the professional justice community, pervasive misunderstanding dominates each agency's comprehension of the procedures governing other agencies. Further, within the community of justice agencies, a lively debate rages over the practicality of their respective procedures, since often one agency's interests are undermined by another agency's procedures.

The public retreats, as increasingly dissatisfied spectators watch how crime is processed by the state. As with almost all public myths about crime, the converse of what the public concludes is true. There is much the public can do, – *and*, without empowering the public, there is little of any lasting benefit professionals and state agencies can accomplish.

Myth #6 *"One size fits all"*

In the past hundred years we have increasingly swept conflicts arising from old and new problems into courts. Only recently has the "radical monopoly" of the courts over conflict been challenged by a number of other processes. Conflicts are far too complex, far too unique to be effectively resolved through one process.

The need to encourage many different processes for resolving the conflicts surrounding crime requires changing, but not discarding the current system. We will always need a professional justice system for crimes communities cannot or do not wish to handle. The boundaries between the jurisdictions of community and state processes can be developed.

However, unless we encourage communities to develop community-based processes for resolving conflict, we will continue to rapidly worsen the safety of communities, and undermine the values, well-being and self-reliance of families and communities. Exclusive reliance upon a national crime system will continue to divert scarce public funds from vital social investment into processing crime, and will continue to increase the number of people disconnected from families and communities, people whose lives will be increasingly mired in substance-abuse and crime.

Reliance upon one method of processing conflict has not, and cannot, fit the needs of all communities if our goals are to prevent crime and generate healthy communities.

Myth #7 *Community justice is only for small communities*

Initiatives within the justice process that aspire to empower people to participate in resolving their conflicts are constantly marginalized. “Won’t work in large urban areas.” “Can’t work with adults.” ”Can only deal with minor offences.” These comments reflect a failure to appreciate the process, the purpose, or the impact of empowering people to address their conflicts. Community Justice processes are about people in conflict, not just about people in small communities, or just about young people. No matter where people affected by crime may live, they share similar needs and interests in moving beyond the experience of crime. Being empowered, being reconnected to families, to communities makes the same contribution to healing in small or large communities.

Processes that engage and empower are not frills, not add-ons to an overworked justice process to allow dumping off minor cases to an inferior process. These systems have the potential to provide the primary means of responding to conflicts in all parts of society.

It is possible the terms commonly used to describe these processes invite perceptions that limit their use. Community and Restorative Justice are both misleading terms. No one has yet coined a term that fully captures what these processes have the potential to achieve.

The term “Community Justice”, commonly used in Canada, suggests a community justice process exists only in geographical places that constitute a defined community. Community is not a place. A community is created by people interacting and connecting one to another, sharing the experience of life through work, social, recreational, religious or other activities. A community can be fellow workers, classmates, or the intimate group of friends and family that comprise a personal emotional support network.

The term “Restorative Justice”, currently popular in the United States, suggests the process concentrates on restoring relationships or circumstances. This is only a small part of what may happen in some cases and in most cases restoring what previously existed is not what happens. Processes such as Circles strive to change the dysfunctional relationships that previously existed and probably contributed to causing crime.

Processes that empower individuals, families, and communities to take responsibility for handling problems arising from crime, whatever they may be called, are as important to society as the formal justice system.

These processes are appropriate for all geographical places, all age groups, and for most crimes.

Summary

The task of confronting these public myths about crime, and of changing public opinion will not be as difficult as many politicians assume. Aside from murder and other extreme crimes of violence, most people appreciate punishment by itself cannot change behaviour, and often merely further entrenches “bad” conduct by reinforcing ”bad” self-images. Political leaders are becoming increasingly aware of the uncontrollable, escalating costs of excessive reliance upon the state and upon punitive responses to crime. They know they must find another way.

In the past, politicians were able to postpone dealing with the underlying social conditions causing crime by removing offenders from their families and communities - isolating them in jails and by replacing the conflict resolution capacities of families and communities with professionals. The long-term costs of these short-term solutions are now upon us. Politicians have much less flexibility today to employ short-term solutions, and even less scope for ignoring the underlying causes of crime.

It is time, and we all know it, to stop investing *all* our resources in filling sand bags against the flood, and to explore upstream to discover what is causing the flooding waters to rise each year.

Armed with “full” and accessible information about current expenditures on justice, on what these expenditures achieve, and on what options exist, the public can make choices driven less by emotions, and more by the merits of what can best promote community security and well-being. The first steps in starting community justice initiatives must debunk these myths that perpetuate the growing state industry of crime-control. The first steps must ensure the community appreciates there are alternatives, alternatives that serve the best interests of communities. The energy and commitment necessary to build and sustain a community justice initiative cannot be mounted if these myths prevail. These myths keep public expenditures flowing into state agencies, reinforce disparaging attitudes among justice professionals about community empowerment, and perpetuate within communities a resignation that there is little they can do but increasingly rely upon state justice agencies.

Endnotes

[1] Peacemaking Circles are often referred to as Sentencing Circles. However, sentencing is only one part of what happens in a Circle process. The peacemaking, healing focus of the Circle is not properly reflected by referring to the Circles as *Sentencing* Circles. The Circles run by local Keepers, whether they involve judges or not, are referred to in this paper as Peacemaking Circles. Circles run by judges in the court are referred to as Sentencing Circles. The different kinds of Circles are described at p. 12.

[2] While this paper concentrates on the use of Circles for criminal cases, Circles have been, and can be, used for family, civil conflicts, for institutional conflicts, public issues, and conflicts in the workplace.

[3] *Evaluating Justice: Canadian Policies and Programs*, Julian V. Roberts, Joe Hudson (eds.), Toronto: Thompson Education Pub., c1993 at p. 5. In England, studies suggest only 15 per cent of all crime is responded to. There is little reason to believe the figure for Canada is much different.

[4] While this paper says little about the spiritual dimensions of Circles, it is not because this dimension is unimportant, it is because I have much yet to learn about this dimension of Circles.

[5] *Penal Reform*, Vol. 2. # 3, 1994 @ p. 3, Phil Goff notes in Stimulus that Family Conferences were instrumental in closing down 23 of 26 young offenders institutions, and in reducing court sitting time for hearing child protection and young offender cases by 80 per cent.

[6] *Tapping Hidden Strengths*, M. Isolina Ferri - In Context, Vol. # 38 Spring 1994.

[7] John O'Haley - Japanese justice system - Paper given in Aylmer, Quebec, February 1995.

[8] Genese County earned $630,000 in 1992 housing inmates from other counties.

[9] Studies of inmate populations reveal the need for public investment in social and economic programs to prevent crime. Most inmates have minimal education, few skills for finding or keeping employment, suffer from mental and physical ailments, have few positive connections to family or communities, have low self-images and little faith in their future. Most criminals need social not justice resources to change their lives.

[10] The first recidivism study of adults processed through the Kwanlin Dun Community Circles found dramatic decreases in the frequency and seriousness of criminal behaviour. Among offenders who had committed an average of almost 20 criminal offences throughout their lives, the rate of serious offences after being involved in the Circle process dropped 80 per cent over comparable time periods.

[11] For an eloquent exposition of the linkage between community justice and community development see: Zehr, H., Changing Lenses: A New Focus for Criminal Justice, Scottsdale, Pa: Herald Press; Van Hess, D., Criminal Justice, Restitution and Reconciliation, Editors: Galaway, B., and Hudson (1990), Monsey, New York: Criminal Justice Press.

[12] Social capital constitutes a measure of a community's well-being based upon the extent community members take responsibility for community well-being and by the vibrancy of social interconnectedness within the community.

[13] A well established and broadly supported community justice process would require fewer police, certainly fewer non-local police officers. Local police officers, either ex-RCMP officers or locally trained officers who wish to make their home in a community, can be instrumental to the success of community justice and be much less expensive – if only because the annual costs of transferring officers are avoided. Community policing does work. However, to work, clear agency commitment must be seen right down to the community. Successful or financially penalize officers competent in community policing for staying in a community.

[14] Thus far in the Yukon nothing has been a greater barrier to the growth of Community Circles than justice policies that frequently rotate justice officials, especially police and Crown, in the communities.

[15] In *R.v. Gingell*, June 18, 1996, unreported, Y.T.C., a Sentencing Circle involving very personal issues in a sexual offence, Lilles, J., endeavoured to find a reasonable accommodation between the interests of the media and the interests of Justice. This decision provides a valuable consideration of the competing interests and the practical ideal in dealing with these conflicting interests.

[16] In *R. v. ,Webb* [1993] 1 CRLS, p. 148, Y.T.C., the considerations and conditions for extended sentencing adjournments are discussed.

[17] In Kwanlin Dun engaging a local victim co-ordinator has enormously improved the process for victims, and for the community.

[18] As a part of being accepted into the Circle, offenders agree to release to the justice committee their criminal record and the relevant information constituting the legal basis for the offence.

[19] *See Circle Sentencing: Making Real Differences*, Stuart, B., (1996) in Rethinking Disputes: the Mediation Alternative, Cavendish Publishing Limited.

[20] Understanding the dynamics and contributions of support groups will be a vital part of building successful community Circles. Early observations suggest relative strangers participating in support groups with family and friends, strengthen support groups by offering fresh insights, and by motivating those close to offenders or victims to persevere. If relative strangers have peacemaking or mediation skills, they can be instrumental in overcoming old, entrenched attitudes that can be detrimental either because they are excessively negative about the offender's genuine desire to heal, or overly protective in denying the "real" causes of criminal behaviour.

[21] In a consensus process, the Keeper's familiarity or connections to the circumstances surrounding the case can assist their ability to facilitate the process. While a lack of direct interest in the case is a consideration in choosing a Keeper, knowledge or familiarity with the underlying circumstances on some levels does not constitute the basis for rejecting an otherwise ideal Keeper for the case. Unlike Judges, a Keeper's knowledge of intimate details helps a Keeper manage the process. In the Circle, a Judge or Justice of the Peace provides a "neutral" or unbiased perspective when necessary.

[22] Filner and Shaw, *Development of Dispute Resolution in State Courts*, NIDR Forum, Summer/Fall 1993.

[23] See C.J. Bayda, in dissent, in *R.v . Morin*, supra.

[24] *Social Problems*, "Notes on the Sociology of Deviance ", Erickson, Kai, Buffalo, N.Y.: Society for the Study of Social Problems, (1962), Vol. 9 @ p. 113.

[25] Interview with Mike Dooley, Program Director, Vermont Citizen Panels - April 1996

[26] A close working relationship reflected by a constant contact and an active exchange of information between the support group and probation officer is essential to make the partnership work in deciding when and how to breach offenders who fail to carry out their responsibilities. A community justice co-ordinator can be instrumental in establishing and maintaining the vital connections between a probation officer and a support group.

[27] The impact on families and communities of lengthy incarceration, the impact on victims left in the wake of a criminal process without adequate care, the social costs of driving people deeper into anti-social behaviour, the costs of draining vital investment from constructive social development (education, health, employment) to fund the "industry of crime control"; all these and much more must be factored into any true assessment of the social costs of current justice systems.

[28] From 1980 to 1985 in the Yukon, community justice initiatives including Circles were tried, and supported by several professional justice officials. Since then, all the justice players have changed.

[29] *R*. v. Moses (1992), 71 C.C.C. (3d) p. 247 (Y.T.C.)

[30] Facilitator's Guide to Participatory Decision Making, Kaner, Sam - New Society Highlights (Philadelphia) 1996; Open Space Technology, Owen, Harrison, Abbott (Maryland) 1995. These books provide a fountainhead of ideas.

[31] Many professionals realize the advantages to them and to the community of community justice partnerships. The lack of any formal or informal means to bring the potential partners together, coupled with a growing isolation of justice agencies from communities has more to do with explaining why more community justice projects have not been started, than attempts to protect professional turf.

[32] Introducing alternatives to the adversarial processes, and to a range of possible partnerships with formal justice agencies can and has motivated many to pursue opportunities to work in their communities as mediators, counsellors, community organizers, health workers, victim and offender support workers and on other activities related to managing conflict within their communities. Some have pursued training necessary to commence new careers either within the community or within the formal justice agencies as court workers, probation officers, police officers, community liaison officers, counsellors, mediators and lawyers. All new volunteers or new career adds to building the community's social capital.

[33] Huber, M., B.C. Justice Institute, *Voice and Spaces*.

[34] Numerous studies and reports debunk the current popular mythologies supporting the utilitarian potential of punishment. Lorene Bergins in her article on Punishment, published by the National Church Council on Justice, superbly underlines the absence of utilitarian purpose and moral grounds in societies' excessive reliance on incarceration.

[35] Reparative Probation Boards, Dooley, M., p. 185, *Restoring Hope through Community Partnerships,* published by American Probation and Parole Association. For example, justice officials in Vermont faced with burgeoning demands for increased justice services that the state could ill afford, investigated the myth that the public supported their continuing investment in punitive responses to crime. A public survey process that probed beyond superficial responses revealed that Vermonters believe:

- the whole criminal justice system needs to be overhauled (75 per cent)
- non-violent offenders should pay back victims and the community (92 per cent)
- communities should be actively involved.

[36] Despite one of the highest incarceration rates of adults and young offenders in the western world, the Yukon has no evidence to suggest high rates of incarceration lower crime rates.

[37] Doob, Anthony and Roberts, Julian (1988), *"Public Attitudes Towards Sentencing in Canada", in Public Attitudes to Sentencing,* N. Walker and M. Hough (eds), Aldershot: Gower.