

**RESTORATIVE JUSTICE AND CRIMINAL JUSTICE
REFORM IN BRITISH COLUMBIA:
IDENTIFYING SOME PRELIMINARY QUESTIONS
AND CONCERNS**

**Prepared for:
BC Association of Specialized Victim Assistance &
Counselling Programs**

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

FOREWORD

PART I - INTRODUCTION

PART II - A LITERATURE REVIEW OF RESTORATIVE JUSTICE PRINCIPLES, COMMON ELEMENTS, PROGRAM MODELS AND ENTRY POINTS WITHIN THE CRIMINAL JUSTICE SYSTEM

- A. Principles Underlying Restorative Justice
- B. Common Elements of Restorative Justice Initiatives
- C. Types of Restorative Justice Programs/models
 - 1. Family Group Conferencing
 - 2. Victim/Offender Reconciliation
 - 3. Community Accountability/Sentencing Panels
 - 4. Circle Sentencing
- D. Where Restorative Initiatives Operate in the Criminal Justice System
- E. Summary: The Promise Of Restorative Justice - Some Words of Caution

PART III. JUSTICE REFORM IN BRITISH COLUMBIA - AN OVERVIEW OF THE MINISTRY OF THE ATTORNEY GENERAL'S RESTORATIVE APPROACH TO CRIMINAL JUSTICE

- A. Introduction and Background
- B. Recent Developments and Directions
 - 1. *The Restorative Justice Framework*
 - 2. *The Community Accountability Program Information Package*
 - 3. Features of the Expanded Diversion Policy
- C. Summary And Analysis

PART IV. PERSPECTIVES FROM THE FIELD AND CONCERNS RAISED IN THE LITERATURE (UPDATED FROM JUNE 1997 PAPER)

- A. Qualified Support For Particular Aspects of Restorative Initiatives And Expanded Diversion
 - 1. Support for "Progressive Reform" of Aspects of the Criminal Justice System
 - 2. Alternatives for Youth
 - 3. More Appropriate Way of Dealing with Offenders on Less Serious, Non-Violent Offenses
 - 4. Increased Community Responsibility
 - 5. Perhaps Beneficial to Some Female Offenders
 - 6. Potential to Increase the Effectiveness of VAWIR (and Child Sexual Abuse and Sexual Assault Policy)

B. Questions, Issues and Concerns

1. The Absence of Victim Services and Women's Equality Seeking Groups in the Process
 - a. The Central Role for Victims in Restorative Justice Generally
 - b. What is the Effect of the Absence of a Gender-based or Equality Analysis
 - c. Losing the Victim's Perspective - What Can We Learn From Other Jurisdictions?
 - d. Summary
2. Violence Against Women in Relationships Policy ("VAWIR Policy")
 - a. Expansion of Police Discretion
 - b. The "Exceptional Circumstances" Provision
 - c. Regional Crown Assigned Responsibility for Determinations of "Exceptional Circumstances"
 - d. Substantiation of Concerns in the Literature
3. Degree to Which Initiatives are Budget-Driven
 - a. Implications for Research, Analysis and Evaluation
 - b. Other Budget-related Concerns
4. Consideration of Implications for Ethnic/Cultural Communities
5. Consideration of Implications for Gay, Lesbian, Bisexual and Transgendered Communities
6. Screening for Appropriateness
7. Net-widening
8. What about the Charter of Rights and Freedoms?
 - a. Procedural Protections?
 - b. An Equality Rights Analysis?
 - c. The Availability of Legal Aid Counsel
9. Accountability
10. Monitoring of Diversion Incidents/Agreements
11. Systemic Discrimination and Bias in the current Criminal Justice System
 - a. Steps to Ensure Discrimination and Bias Are Eliminated and Not Duplicated
 - b. Other Points for Consideration

PART V CONCLUSIONS

PART VI RECOMMENDATIONS FOR FURTHER INQUIRY AND ACTION

EXECUTIVE SUMMARY

Restorative justice is essentially a way of thinking about crime and the criminal justice system —focussing on (i) making offenders accountable to both victims and the community, (ii) increasing the role of victims and community in ensuring that accountability, and (iii) repairing the harm and restoring relationships that have been damaged as a result of crime. Increasingly, restorative justice is equated with particular program models; for example, family group conferences, victim/offender reconciliation programs, community accountability programs, and circle sentencing. The Province of British Columbia is not alone in its demonstrated interest in restorative justice initiatives. Indeed, there is a burgeoning interest in restorative justice on the part of policy makers and justice system personnel in many jurisdictions.

The first public indication of the Province's intention to adopt a restorative approach to criminal justice can be traced to a News Release dated November 13, 1996 in which the Attorney General announced his intention to move in a new direction in relation to the administration of criminal justice in the province. The announcement identified a number of reforms including: (i) holding non-violent, less serious offenders accountable through increased diversion programs, and (ii) increasing the voice of victims and the role of communities in the criminal justice process. While the term "restorative justice" did not appear in that communique, its substance indicated that at least parts of a restorative approach had informed the announcement of the reforms. Since that announcement, there have been further developments as the Ministry of the Attorney General has released its *Strategic Reforms of British Columbia's Justice System (dated April 1997)*, a *Restorative Justice Framework (January 1998)*, and a *Community Accountability Programs—Information Package*. These documents describe a restorative approach to justice that contemplates both the introduction of restorative processes in the criminal justice system and collaborative dispute resolution mechanisms in the civil and family justice systems. An information packaging profiling Community Accountability Programs has been developed to assist individuals and communities interested in launching such a program.

The impetus for the first draft of this Paper released in June of 1997 (see Foreword) came from a growing concern that significant policy decisions were being made without any input from key partners in the criminal justice system — in particular, women's equality-seeking groups and victim service providers, especially specialized victim services, sexual assault/woman assault programs, stopping the violence counselling programs, transition houses, wife assault coordination programs and others. This Paper provided a forum within which to articulate some of the preliminary questions, issues and concerns which have arisen in response to the Ministry of the Attorney General's criminal justice reform initiatives and, in particular, the adoption of a restorative approach to the administration of criminal justice in this province.

Interviews with a small number of specialized and police-based victim services providers in May and June of 1997 revealed that there was some qualified support for these initiatives. There was some support for "progressive reform" of certain aspects of the criminal justice system, particularly in relation to deal with youth as well as a recognition that restorative approach might offer more appropriate ways of dealing with offenders on less serious, non-violent offences. However this support was consistently qualified by the need for more information about the

Province's plans and concrete assurances that offences involving violence against women in relationships (VAWIR), sexual assault, child abuse, criminal harassment and hate-motivated offences would not be subject to this restorative approach. At the same time as some qualified support for these initiatives was expressed, there were a host of questions, issues, and concerns raised, including

- (i) the lack of consultation with victim service providers, women's equality-seeking organizations and key stakeholders at the initial stages of policy development;
- (ii) the lack of available information in the initial stages;
- (iii) the absence of representation from victim services providers and women's equality-seeking groups at key decision-making tables;
- (iv) the lack of critical research, analysis and evaluation on restorative justice and the attendant failure to expressly include gender/diversity/equality analyses in the formulation of policy;
- (v) the potential for "exceptional circumstances" to be abused by expanded diversion policies and budgetary considerations; and
- (vi) the failure to acknowledge the need for provincial standards, appropriate training and a central monitoring mechanism to track restorative/diversion agreements.

The nature of these questions, issues and concerns are examined in the Paper. In addition there is an Update component that:

- (i) indicates any refinement of the perspectives originally documented;
- (ii) informs readers about areas where MAG has responded to the concerns raised in the June 1997 Paper; and
- (iii) alerts readers to additional, previously unforeseen, concerns.

A compendium of Recommendations are contained in Part VI of the Paper. In particular, the Paper recommends that:

- (i) Full representation of and meaningful consultation with victim assistance programs, specialized victim assistance programs and women's equality groups is required on an ongoing basis in relation to both restorative justice and the expansion of diversion/alternative measures.
- (ii) There is a need for an independent examination of the intent, application and framework of restorative justice within the family justice system. This examination has to be undertaken with input from and the involvement of appropriate, informed individuals and groups.
- (iii) The "exceptional circumstances" provision should be eliminated in relation to VAWIR, sexual assault, child sexual abuse, criminal harassment, and hate-motivated offenses until there is an opportunity to conduct all of the necessary research, analysis and evaluation of these initiatives and consult with all of the affected parties.
- (iv) There remains an urgent need to address the lack of critical research, analysis and evaluation on restorative justice and the attendant failure to expressly include gender/diversity/equality analyses in the formulation of policy.
- (v) Recommendations specific to the acknowledgement of the need for provincial standards,

appropriate training and a central monitoring mechanism to track restorative/diversion agreements are also outlined.

A DISCUSSION PAPER

RESTORATIVE JUSTICE AND CRIMINAL JUSTICE REFORM IN BRITISH COLUMBIA IDENTIFYING SOME PRELIMINARY QUESTIONS, ISSUES AND CONCERNS

FOREWORD

This Discussion Paper has been drafted in two stages. The first draft was completed in June of 1997. The impetus for the first draft came from a growing concern that significant policy decisions were being made without any input from key partners in the criminal justice system — in particular, women's equality-seeking groups and victim service providers, especially specialized victim services, sexual assault/woman assault programs, stopping the violence counselling programs, transition houses, wife assault coordination programs and others. Specifically, these key stakeholders were extremely concerned that:

- (1) the restorative justice initiative was being developed and implemented without the benefit of gender/diversity and equality analyses of the implications of the reforms; and
- (2) VAWIR Policy (and the upcoming Sexual Assault and Child Sexual Abuse Policies) were about to be undermined by the introduction of an "exceptional circumstances" provision. Essentially, this provision allows regional Crown Counsel (or their "designates") to divert certain VAWIR offences to alternative measures and restorative justice programs.

There was also concern about the lack of concrete information available around what the Ministry of the Attorney General (MAG) was planning in relation to criminal justice reforms, generally, and restorative justice, particularly, a situation which complicated the development of the first draft of the Paper¹.

This second and final draft is an Update of the June 1997 draft. This final draft contains much of the same material as the first, thereby retaining background information and a record of the reform process. In addition, the final draft includes: (1) references to a number of concrete policy developments which have occurred over the past ten months in relation to British Columbia's restorative justice initiatives; and (2) a refined and reaffirmed discussion of the issues, questions, analysis and recommendations made in the first draft.

PART I – INTRODUCTION

The main purpose of this Discussion Paper is to articulate some of the preliminary questions, issues and concerns which have arisen in response to the Ministry of the Attorney General's criminal justice reform initiatives and, in particular, the adoption of a restorative approach to the administration of criminal justice in this province. The term "restorative justice" refers to an alternative way of thinking about crime and society's response to crime. According to the Ministry of the Attorney General's *Restorative Justice Framework* (the "Framework")

... restorative justice is a philosophical approach to responding to crime, aimed at repairing the harm caused by a criminal act and restoring the balance in the community affected by the crime. (p. 4)

To a large extent the current initiatives flow out of the passage of Bill C-41 in September of 1996². Bill C-41 contained amendments to the Criminal Code which provided for "alternative measures" for adults and an enforcement mechanism to ensure compliance³.

The Province has since introduced initiatives that expand both police and Crown discretion to "Divert certain types of less serious offences and low-risk offenders out of the formal court system. These expanded discretionary powers figure prominently in Ministry plans for reform and have far-reaching implications for the administration of justice in the province."⁴

At the same time, reforms to the civil and family justice systems involving the use of collaborative dispute resolution processes are being also introduced under the rubric of a "restorative framework". As with criminal justice reforms, changes to the civil and family justice system will also have far-reaching implications, with unique attendant problems that require independent examination. An analysis of the implications of a restorative approach to justice in the context of family law disputes is beyond the scope of this Paper. It is, however, a concern that the government is attempting to implement a "made-in-B.C." justice reform package that will see these two inherently different justice systems placed together under one restorative justice framework.

Furthermore, past experience with law reform and policy development in the criminal justice system has shown that gender and diversity issues are often relegated to the bottom of the agenda— if they make that agenda at all. Ideally, this new way of thinking about justice would have taken the opportunity to incorporate gender and diversity analyses from the outset. Such an initiative in itself would have warranted the label "progressive". Since this was not the situation, this Paper attempts to document and set out some of the gender and diversity-related issues, questions and concerns so that they can be placed on the justice reform agenda and addressed accordingly.

While initially reviewing this fundamental shift in the direction of criminal justice policy, a number of concerns at a number of different levels were raised. These included:

- (i) the lack of consultation with victim service providers, women's equality-seeking organizations and key stakeholders at the initial stages of policy development;
- (ii) the lack of available information in the initial stages;
- (iii) the absence of representation from victim services providers and women's equality-seeking

groups at key decision-making tables;

- (iv) the lack of critical research, analysis and evaluation on restorative justice and the attendant failure to expressly include gender/diversity/equality analyses in the formulation of policy;
- (v) the potential for “exceptional circumstances” to be abused by expanded diversion policies and budgetary considerations; and
- (vi) the failure to acknowledge the need for provincial standards, appropriate training and a central monitoring mechanism to track restorative/diversion agreements

Since June of 1997, the Ministry of the Attorney General has released *its Strategic Reforms of British Columbia’s Justice System* (dated April 1997) and a Restorative Justice Framework (January 1998). More details of the restorative approach to criminal justice envisioned by the Ministry is also contained in *A Community Accountability Programs Information Package*. With the release of these documents, and as the process has moved along since the writing of the first draft, a number of the above-mentioned concerns have been addressed, in part. Others have not been addressed at all. Moreover, as the details of the Ministry of the Attorney General’s justice reform initiatives are released, still other questions, issues and concerns are being raised.

There also continues to be the need for a comprehensive and research-based analysis of the range of implications inherent in any restorative justice initiative. With this in mind, it is hoped that the issues, questions, and concerns raised in this Paper, while tentative, will prove useful as a starting point for that necessary critical analysis.⁵

To this end the Paper is divided into six parts as follows:

Part I consists of the Introduction

Part II highlights the main principles and features of restorative justice as conceptualized by proponents, including a literature review of: (a) main principles; (b) identified common elements; (c) types of programs and models; and (d) possible entry points for restorative initiatives within the criminal justice system. A summary identifies a number of questions to consider when the principles inherent in restorative justice are used to guide B.C.’s policymakers.

Part III provides background information about British Columbia’s justice reform initiative. It also reviews the *Restorative Justice Framework* highlighting: (a) the principles inherent in the *Framework*; (b) the models of Community Accountability Programs (CAPs) presented; and (c) the features of the expanded diversion policy. The section is completed with a summary of points identified for consideration and discussion.

Part IV identifies some preliminary issues, questions and concerns raised by the introduction of a restorative approach to criminal justice and the expansion of diversion/alternative measures.

Part V offers some concluding comments.

Part VI provides a compendium of recommendations for further consideration based on the issues, concerns and questions raised throughout the Paper.

PART II. A LITERATURE REVIEW OF RESTORATIVE JUSTICE PRINCIPLES, COMMON ELEMENTS, PROGRAM MODELS, AND ENTRY POINTS WITHIN THE CRIMINAL JUSTICE SYSTEM

A. PRINCIPLES UNDERLYING RESTORATIVE JUSTICE

The term "restorative justice" refers to an alternative way of thinking about crime and society's response to crime.⁷ It is not a program or group of programs. Rather, as one of its leading proponents has suggested, "restorative justice is a way of thinking, a way of behaving and a way of measuring."⁸ Indeed, it is most often described by its proponents as a philosophical framework which emphasizes the ways in which crime harms relationships in the context of community.⁹

There are a number of different formulations or versions of the principles underlying the restorative justice.¹⁰ For example, the principles may be formulated to apply strictly to youth or to both youth and adults. Similarly, some formulations are derived from or targeted to specific cultures — for example, the Aboriginal sentencing circle and the Maori-based family group conference. Nevertheless, all these formulations share the characterization of restorative justice as a philosophical approach to criminal justice which:

- (i) views crime as a violation of victim and community rather than the state;
- (ii) attempts to make offenders accountable to the parties violated — the victims and the community;
- (iii) allows for a response to crime which involves the active participation of offenders, victims and community;
- (iv) tailors that response to "restore" the relationship and repair the harm;
- (v) measures accountability by the assumption of responsibility and taking action to repair the harm; and allows victims a central role in the process.¹¹

COMMON ELEMENTS OF RESTORATIVE JUSTICE INITIATIVES

A Discussion Paper from New Zealand further confirms the above-mentioned philosophical approach to restorative justice by identifying the following as common elements in restorative justice programmes:¹²

- Defining crime as injury to victims and the community peace;
- Focusing on putting right the wrong;
- Viewing both the victim and the offender as active players in responding to and resolving the criminal conflict;
- Compensating victims for their losses through restitution by the offender;
- Empowering victims in their search for closure through direct involvement in the justice process;
- Assisting victims to regain a sense of control in the areas of their lives affected by the offence;
- Holding offenders accountable for their actions;
- Impressing on offenders the real human impact of their behaviour;
- Encouraging offenders to accept responsibility for their behaviour in a way that will aid them to develop in a socially responsible way;

- Seeking to address the personal and relationship injuries experienced by the victim, offender and the community as a consequence of the offence; and
- Committing to include all affected parties in the response to crime.

C. TYPES OF RESTORATIVE JUSTICE PROGRAMS/MODELS

While restorative justice is essentially a way of thinking about crime and the criminal justice system, it is increasingly becoming equated with particular program models across a number of jurisdictions. Currently, there is an ever increasing amount of literature that describes the various components of each — complete with examples of success stories and evaluations of participant satisfaction.¹³

Despite these testimonies, it needs to be recognized that a comprehensive literature review and analysis of any critical commentary that might be emerging with respect to these restorative initiatives is still required. With this important point in mind, the following are given as examples of the programs and models most commonly referred to in the literature as "restorative".

1. Family Group Conferencing¹⁴

Family group conferencing (FGC) originated in New Zealand and initially was primarily concerned with providing Maori people with a culturally appropriate form of dispute resolution. The Family Group Conference approach was incorporated into the *Children, Young Persons and Their Families Act* (NZ 1989) and subsequently has largely replaced Youth Court as a forum for dealing with young offenders.

The FGC model emphasizes the need to: (i) bring together the offender, the victim and the irrelative support groups to achieve mutual understanding of the reasons and circumstances of the crime from both perspectives, and (ii) resolve the matter in such a way that it reinforces the position of the young person as a member of the community.⁴

2. Victim/Offender Reconciliation¹⁵

Victim/Offender Reconciliation Programs (VORPs) involve face-to-face meetings between victims and offenders in the presence of a trained mediator. The parties have an opportunity to talk about the crime, to express their feelings and concerns, to get answers to their questions, and to negotiate a resolution. Mediators do not impose settlements.⁴

3. Community Accountability/Sentencing Panels¹⁶

"Community sentencing" initiatives across the country take many forms including: Community or Youth Justice Committees, accountability committees, corrections committees, and sentencing panels. Most involve citizen volunteers or elders who often rely on such restorative measures as restitution, reparation, mediation and victim involvement. There is often an attempt to deal with the social conditions contributing to the crime. These community justice initiatives operate in

both aboriginal and non-aboriginal communities and can serve adults and/or youth depending on their mandate.

Circle Sentencing¹⁷

Circle sentencing usually provides for a community-based, pre-sentence advisory process with a strong reparative and restorative focus. Once there has been a finding or admission of guilt, community members sit in a circle with the judge, prosecutor, defence counsel, police and other service providers to discuss sentencing options and plans to reintegrate the offender back into the community. It varies from community to community and is used largely in aboriginal communities with adults more than young offenders.

D. WHERE RESTORATIVE INITIATIVES OPERATE IN THE CRIMINAL JUSTICE SYSTEM

There are examples of restorative options at every possible stage in the criminal justice system—pre-charge, post-charge, post-conviction, post-sentence, and even several years into a lengthy penitentiary sentence. Restorative initiatives may even have a place in preventive (pre-offence) efforts. In addition there are some models which contemplate no contact whatsoever with the criminal justice system.

E. SUMMARY: THE PROMISE OF RESTORATIVE JUSTICE—SOME WORDS OF CAUTION

Restorative justice is simply a way of thinking about crime and the criminal justice system which is increasingly equated with particular program models such as VORPs and family group conferencing. There is a great deal of recent interest on the part of policy makers and others in a restorative approach to crime and criminal justice. The current appeal seems to be, in part, a response to a number of factors, including:

- (i) widespread dissatisfaction of all the key stakeholders with the current approach to crime and criminal justice;
- (ii) the promise of a restorative approach to directly attend to some aspects of that dissatisfaction.¹⁹
- (iii) the promise of the restorative approach to deliver a higher satisfaction rates from victims, community and offenders;²⁰
- (iv) increased awareness of indigenous approaches to justice and the need to make provisions for these approaches at least in relation to members of aboriginal communities;
- (v) a desire to implement a more humane system;
- (vi) an acknowledgement that the current system is not working; and lastly,
- (vii) budgetary constraints.

This burgeoning interest in restorative justice reform, however, is not without debate over whether it is complete or incomplete as a model of justice.²¹ A number of questions emerge when—contemplating the use of this set of principles as a guide to policy makers and program administrators. For example, further examination of the following is necessary:

- (i) how police will go about identifying candidates for a restorative justice process, and what safeguards will be put in place to ensure that innocent accused individuals do not admit guilt as a way of staying out of court;
- (ii) the scope of restorative justice measures, that is, what kinds of offenders and offences is this approach best suited for;
- (iii) the role of due process and procedural fairness;
- (iv) the relationship of the Restorative Justice Framework and its implementation to the government's constitutional obligations under the *Charter of Rights and Freedoms*;
- (v) the quality of the voluntariness of both the offender and the victim;
- (vi) the mechanisms for monitoring and enforcing agreements;
- (vii) how the concept of double jeopardy squares with the ability of Crown to prosecute offenders who breach their diversion/alternative measures contracts;
- (viii) what is the appropriate course of action in cases where no agreement is reached; and finally,
- (ix) the host of additional questions with respect to the extent to which this philosophical approach has been tested as a framework for justice in a modern, western industrial society.

Furthermore, it is evident from even a cursory review of the literature on restorative justice that there is little attention to gender and to diversity as analytical constructs. The terminology "victims," "community" and "offenders" are invariably used without any kind of accompanying gender analysis or diversity analysis. Moreover, restorative justice is not discussed in the literature within a contextual analysis that recognizes the systemic violence and abuse that women and children live with in this society; nor is there any analysis of the particular dynamics of violence and abuse in relation to other minority and marginalized members of society. In a related vein, an equality rights analysis was nowhere to be found in the limited literature review that was undertaken for the purposes of developing this Paper.

In short, the restorative justice framework or theory remains incomplete until these and other questions are identified, researched, debated, and resolved to the satisfaction of all stakeholders. Of utmost importance is the inclusion of gender and diversity analyses in the formulation of any framework in order that the interests of female, minority and marginalized victims are validated and accounted for.

With these identified shortcomings and queries in mind, it is expedient to ascertain how British Columbia policy makers see these restorative principles operating within the present criminal justice system. To this end, the following section presents a review of the Framework Document on *Restorative Justice Community Accountability Programs Information Package* that has recently been released by the government.

PART III. JUSTICE REFORM IN BRITISH COLUMBIA — AN OVERVIEW OF THE MINISTRY OF THE ATTORNEY GENERAL'S RESTORATIVE APPROACH TO CRIMINAL JUSTICE²²

(i) INTRODUCTION AND BACKGROUND

In a News Release dated November 13, 1996 the Attorney General indicated that British Columbia's justice system requires major reform and that his ministry "has been working with its partners — police, community groups, judiciary, victims' advocates and the legal community" to create a vision and direction for substantive justice reforms. ◇

A number of reforms were identified including:

- tougher prosecution of serious and violent offenders to ensure public safety;
- crime prevention, including early intervention, and holding non-violent, less serious offenders accountable through increased diversion programs instead of committing them to jail;²⁴
- increasing the voice of victims in the criminal process and in effective justice solutions and increasing the role communities play in the criminal system.

While the term "restorative justice" did not appear in this communique, its substance indicates that at least parts of a restorative approach had informed the announcement of these reforms. The announcement, itself, contemplated these reforms, among others, would be pursued using existing Ministry funds that would be reallocated to the justice reform priorities. Those funds would come from internal restructuring and the elimination of 318 positions from inside the Ministry. It was estimated that "\$76 million dollars will be reallocated". However, it was never clearly made out what proportion of this \$76 million would be made available to implement the restorative justice portion of the reforms. This new direction was subsequently reaffirmed in the Opening Address to a Workshop on Diversion hosted by the Attorney General on February 11, 1997. The expansion of diversion policy and the introduction of a restorative approach to criminal justice figured prominently in that address, the context being the recognition of:

- (i) an overburdened and expensive criminal justice system;
- (ii) the need for a tougher approach to high-risk, violent offenders;
- (iii) the fact that our jails contain a disproportionate number of aboriginal people; and
- (iv) the widespread dissatisfaction expressed by the people most directly affected by crime²⁵.

The Ministry of the Attorney General subsequently released a document entitled *Strategic Reforms of British Columbia's Justice System* (April 1997) which was not available at the time of the initial draft of this Paper. That document outlined the Attorney General's framework for reform of the justice system and described the goals, strategies and specific initiatives to be carried out to improve (i) the delivery of criminal, civil and family justice services, and (ii) the administration of justice in the Province. Interestingly, this document contemplates adopting a "restorative" approach for both the criminal and civil side of the justice system. As part of this overall policy shift the Attorney General states, "I believe in a restorative justice system that gives communities a primary role in developing policies and programs". (See Introduction by Attorney General Ujjal Dosanjh in above-noted document *Strategic Reforms*)

Moreover, further information is now available with respect to the allocation of resources to this initiative. Indeed, it has been made increasingly clear that the amount of resources that the Ministry is allocating to restorative justice initiatives at the community level is minuscule. The latest figures available peg the allocation of resources for the development and implementation of community restorative justice programs at approximately one million dollars. The allocation of so few funds raises a number of important questions, including the availability of funds for:

- (i) designing and implementing quality programs;
- (ii) augmenting the increased workloads of victim services providers;
- (iii) establishing provincial standards with respect to Community Accountability Programs;
- (iv) providing appropriate training and adequate training to volunteers and justice system personnel; and
- (v) designing and implementing a centralized, province-wide monitoring and tracking mechanism.

In sum, at the outset of this reform initiative, there is significant concern that its implementation and effectiveness will be jeopardized due to insufficient funding levels.

RECENT DEVELOPMENTS AND DIRECTIONS

Two sets of documents provide the most up-to-date material on restorative justice in B.C. They are the *Restorative Justice Framework* and the *Community Accountability Programs Information Package* (CAP Information Package). As well, since June of 1997 the Ministry has continued to develop policy and guidelines on Diversion/Alternative Measures for Police and Crown Counsel –though it has proven difficult to get current information on the former. A copy of Crown Interim Policy on Alternative Measures for Adult Offenders is included in the *CAP Information Package*.

(i) Restorative Justice Framework

The Restorative Justice Framework was released in January of 1998. The Framework sets out the philosophy and principles of the Ministry of the Attorney General’s collaborative dispute resolution and restorative justice approaches. It is once again noted that civil and criminal justice reform initiatives fall under the rubric of this one *Restorative Justice Framework*.

Moreover, it is beyond the scope of this Paper to detail the ways in which some of the proposed reforms to the family justice system, in particular, have serious implications for women and children. We do recommend that an independent examination of the intent, application and framework of restorative justice within the family justice system be undertaken, with input and involvement from appropriate, informed groups and individuals.

With these considerations in mind, we will continue our focus on the criminal justice side of the equation, with a look at the Framework inherent restorative justice principles.

The principles and features of restorative justice as set out in Part I of this Paper are clearly reflected in the *Restorative Justice Framework*. The Framework adopts the following definition:

... restorative justice is a philosophical approach to responding to crime, aimed at repairing the harm caused by a criminal act and restoring the balance in the community affected by the crime. (p. 5)

The Framework notes that the restorative approach to crime is rooted in Aboriginal healing traditions and the non-retributive responses to harm advocated by many faith communities. The Framework document then goes on to describe them.

(ii) Community Accountability Programs Information Package

The *CAP Information Package* is a dual purpose document — serving as both a community toolkit and a consultation document. It provides general information about:

1. the restorative approach to criminal justice in B.C., generally;
2. restorative program models;
3. the relationship of police and Crown discretion to community accountability programs and alternative measures respectively;
4. guidelines for community accountability programs; and
5. Getting Started: A Step-by-Step Guide

The types of offences considered appropriate for restorative programs are described as "serious". The only specific offences identified in the *CAP Information Package* as suitable for restorative measures are "offences like shoplifting, mischief and joy-riding".

The restorative program models described in the materials closely approximate those outlined in Part I. The four models include:

1. Victim-Offender Reconciliation Programs (VORPs)
2. Family Group Conferencing Model
3. Neighbourhood Accountability Boards/Panels
4. Circle Remedies

The roles of police and Crown discretion in informal resolution and alternative measures respectively are set out with respect to community accountability programs. The *Information Package* also sets out some Guidelines for community programs. These Guidelines are recommended only and consist of broad recommendations related to the acceptance of any diversion referral, the entering into any diversion agreement and the operation of the community accountability program. There is almost no detail provided in these Guidelines as CAPs are left to develop their own policies around various issues. In found in the *CAP Information Package*, there are a number of specific program considerations underlined for prospective CAP recommends that CAPs consider developing and implementing policies and procedures with respect to the following:

- Confidentiality
- Criminal Record Checks
- Reference Checks for Volunteers
- Record Management

- Complaints, Critical Incidents and Liability
- Program Evaluation

Interestingly, there are no recommendations for the development of policies and procedures in relation to Conflict of Interest issues or specialized training needs.

(iii) Features of the Expanded Diversion Policy

As of June 1997 the Ministry was working with police, RCMP and Crown to reformulate policy and guidelines on Diversion/Alternative Measures. At that time two policies on Diversion/Alternative Measures — one for police and the other for Crown Counsel — were in the drafting stages. The Crown Interim Policy on Alternative Measures for Adult Offenders is listed as an Appendix in the *CAP Information Package*. Interestingly enough, the police counterpart is not similarly listed which is unfortunate given the more direct nexus between the exercise of police discretion and CAPs. The most recent version of the Diversion Guidelines for Police was unavailable for the purposes of review for this Paper. The Draft Diversion Policy Guidelines for Police made available in June 1997 discussed the possibilities of changes which:

- attempted to find ways to resolve specific types of less serious matters informally
- set out four categories of offenses based on a declining scale of severity to support police in exercising their discretion (See Appendix A for current version of Categories)
- talked about expanded use of police discretion (informal) and possibly designating all or some police officers as agents of the Attorney General for the purposes of diversion/alternative measures

C. SUMMARY AND ANALYSIS

The Province of British Columbia is moving ahead with reforms to the criminal justice system. At this time the reforms are limited to the expansion of diversion and the addition of a restorative justice component — namely, community accountability programs.²⁶

What this actually means for the day-to-day administration of criminal justice in this province remains unclear. A review of the Framework *CAP Information Package* reveals the following points which require consideration and discussion:

1. There is a need for further clarification with respect to the exclusion of VAWIR, child sexual abuse, sexual assault, hate crimes and criminal harassment from restorative justice measures. The *CAP Information Package* and the Restorative Justice Framework are seriously deficient in providing clarification with respect to exactly what types of offences and offenders are to be considered for referral to restorative programs. At the outset, the *Framework* document attempts to clarify the relationship of violence against women and other types of offences with the restorative approach to justice reform generally with the following statement:

Nothing in this framework is intended to, nor should be taken to, rescind, modify or replace existing ministry policies on violence against women in relationships and hate crime, nor of forthcoming ministry policies on sexual assault and child abuse and neglect. (P. 2).

The following Note is included in italics: *In both the civil and criminal justice systems, collaborative dispute resolution and restorative justice processes involving victims or significant power imbalances between the parties are not appropriate for all situations. Operational policies developed in this area will need to specify clearly whether restorative approaches are ever appropriate in a given situation and if so, at what point and under what circumstances(p.2)*

These statements assume the reader — who may be anyone from any community across B.C. has previous knowledge of Ministry policy. It is difficult to determine, without previous knowledge, just what types of cases may be inappropriate for these new restorative and collaborative approaches.

Moreover, in the *CAP Information Package* there is the need for an express statement underlining the fact that some offences are inappropriate for diversion. It needs to be made clear that offences involving violence against women in relationships, sexual assault, child abuse, and hate crimes fall under separate and specific Ministry policies. Given present policy, it is necessary to stipulate that these offences should only be diverted to an alternative measures program under the exceptional circumstances provisions of those policies and with the approval of the Administrative or Regional Crown Counsel in the area.

In its present formulation the CAP Information Package contains only two express references to the exclusion of VAWIR, sexual assault, criminal harassment, child abuse and other similar offences. The language is unnecessarily tentative i.e., "...programs should not accept referrals...." and does not communicate adequately the importance of these cautions.

2. In the B.C. formulation the philosophy of restorative justice applies equally to collaborative dispute resolution in the civil arena and restorative approaches to criminal justice. Civil justice reforms which are based on the wide-scale introduction of family mediation and other "collaborative" dispute resolution processes are now placed squarely under the rubric of the Restorative Justice Framework. *There are both unique and shared implications inherent in jointly applying restorative justice principles and a single Restorative Framework to civil and criminal justice reform initiatives.*

We therefore reiterate a strong recommendation that an independent examination of the intent, application and framework of restorative justice within the family justice system be undertaken, with input and involvement from appropriate, informed individuals and groups. At a minimum, the introduction of collaborative dispute resolution processes into the family justice system has to taken into account the nature and extent of "abuse and post-separation" abuse in order to meet the equality concerns of women and children leaving abusive relationships. On their face, the principles of restorative justice and the process of collaborative dispute resolution seem antithetical in situations where there is an imbalance of power and numerous control issues which characterize abusive relationships.

3. There is a commitment within MAG to extend the Restorative Justice Framework throughout the criminal justice system. This commitment presumably means that restorative initiatives will

surface in relation to corrections policy, treatment, parole, rehabilitation and so on. It is imperative that critical analysis of each of these initiatives is undertaken from gender, diversity and equality rights perspectives prior to and during the development of these initiatives. These analyses should be conducted in tandem with meaningful consultation with equality-seeking groups and victim services providers.

4. *Restorative Justice Framework*, somewhat cryptically, credits women's advocacy organizations and victim services agencies with providing further impetus for criminal justice reform and even the development of restorative justice in the province. The Framework states:

In pointing out the ways in which criminal justice processes have historically Failed to meet victims' needs, this critique has been essential to the development of restorative justice. (p. 5)"

The statement is misleading. Women's advocacy groups and victim services agencies have certainly contributed to the critique of the criminal justice system by underlining the systemic discrimination and bias which informs it. However, the Province would be hard-pressed to demonstrate the links between that critique and the development of restorative justice generally, and in the province, specifically without also referring to the emerging concerns of these same groups with restorative justice initiatives.

5. Restorative Justice Framework identifies the following principles as the foundation for its philosophy: awareness, accessibility, inclusiveness, safety, fairness, equity and cost effectiveness. These principles are stated in relation to both civil and criminal justice processes and are described in extremely broad terms which is in keeping with the philosophical tone and intent of the Framework Taken together the principles represent laudable guideposts to underpin the Framework.²⁷

However, what is missing, and is in the process of being drafted, is a more detailed and practical explanation of what these principles mean at the level of operation —and particularly, in the development and implementation of CAPs. For example, in order to achieve fair and satisfactory outcomes under the "Equity" principle, there is a reference to a restorative approach to justice that contemplates collaborative dispute resolution processes and restorative processes that "address—any lack of equity or significant power imbalances between the parties." The average reader may have difficulty determining what these phrases actually mean.

There is a further problem with the explanation that accompanies the "Equity" principle. The assumption that restorative approaches can, in fact, address significant power imbalances and lack of equity is not without considerable controversy. On the civil side, for example, there is an increasingly large body of literature which is critical of claims made by proponents of family mediation —especially in relation to issues of power imbalances and lack of equity. This small descriptive piece does not seem to recognize that critique at all — other than to acknowledge that problems exist.

6. Further, amendments to the Criminal Code contained in Bill C-41 have created a mechanism through which to expand diversion/alternative measures to some adult offenders. When taken together with similar provisions in the Young Offenders, the legal framework now exists to

allow the Province to deal with both young offenders and adult offenders in ways other than by prosecution in court. As well, there is now a provision for an enforcement mechanism for alternative measures which previously did not exist with respect to informal diversion cases. This latter development is welcomed as it introduces a measure of accountability into the process.

7. If provided with an opportunity to review the Police Guidelines on Diversion we would want to ascertain the extent to which they reflect the Ministry's position on VAWIR, sexual assaults, child abuse offences, hate/propaganda offences, hate/bias offences, and criminal harassment offences. The Crown Interim Policy clearly sets out that separate policies apply in relation to these types of offences. Further, we would want to ascertain whether the Guidelines contain a rationale for VAWIR and other similar policies so that police are fully informed of the rationale behind the policies.

Given a recent court case where the judge found that a police officer misconstrued the relationship between the Criminal Code and VAWIR Policy in making an arrest and as a consequence "misguidedly applied the policy rather than the law," it seems appropriate to insist that such explanations make it into the Guidelines and are followed up with training and education. Further, it would be important to ascertain what instructions have been provided to the police in relation to monitoring and ensuring compliance with agreements.

PART IV. PERSPECTIVES FROM THE FIELD AND CONCERNS RAISED IN THE LITERATURE (UPDATED FROM JUNE 1997 PAPER)

The perspectives outlined in this section are largely the product of a small number of telephone and in-person interviews conducted in May and June of 1997 with both specialized and police-based victim services providers (Appendix B). Where possible, this discussion is supported by critical commentary found in the literature.

At the time, the viewpoints canvassed in the course of the interviews indicated that restorative justice and alternative measures/diversion were inextricably linked in the minds of many individuals working in the field. That linkage is reflected in the following presentation of the perspectives and viewpoints revealed during those interviews.

There was little attempt to separate the expressions of support or concern made by the interviewees in relation to aspects of diversion/alternative measures from those expressed in relation to restorative approaches to justice. Further, the discussion is not comprehensive nor even consistent. Rather, the objective is simply to document where support exists for justice reform and highlight some of the issues, questions and concerns which are being raised in the context of restorative justice and the expansion of diversion. To this end, Part III of this Paper is divided into two sections: Section A documents a number of areas where qualified support exists for justice reform. Section B identifies numerous questions, issues and concerns arising out of this reform initiative.

At the time of the interviews, very little was known about the direction of the reforms. This explains, in part, the confusion with respect to the relationship between the two related policies. New information available from the Ministry enables some updating to the original data collected. Accordingly, a number of the following sub-sections are supported with an Update component that:

- (i) indicates any refinement of the perspectives originally documented;
- (ii) informs readers about areas where MAG has responded to the concerns raised in the June 1997 Paper; and
- (iii) alerts readers to additional, previously unforeseen, concerns.

A. QUALIFIED SUPPORT FOR PARTICULAR ASPECTS OF RESTORATIVE INITIATIVES AND EXPANDED DIVERSION

Views canvassed during the course of the interviews indicated there exists some "qualified support" for particular aspects of restorative initiatives.

1. Support for "Progressive Reform" of Aspects of the Criminal Justice System

One of the points of consensus which arose out of the interviews is qualified support for "progressive reform" of the criminal justice system. For some, that support is based on an assessment that incarceration for less serious, non-violent offences is simply not working.

Generally, that support is based on an assessment that:

- (i) the process is moving too fast;
- (ii) the necessary research and analysis and consultation was not being done;
- (iii) all the partners are not at the table;
- (iv) cost considerations were driving the process without regard to other, perhaps more important considerations; and
- (v) important “progressive” steps in the treatment of certain types of offenses as **serious** – particularly those offences involving women and children as their primary victims – would be lost in the rush to embrace a new approach.

The opinions expressed by some government staff/officials were qualitatively different in that, while the same caution was urged, there was an underlying belief that the restorative approach is a progressive and workable alternative to the present retributive approach to criminal justice and that concerns with respect to violent crimes would be met by their virtual exclusion from the ambit of restorative programs and diversion practices.

2. Alternatives for Youth

The urgency of finding alternative means with which to deal with young offenders was a repeated theme in the interviews. There was a lot of concern that contact with the criminal justice system should be minimized for youth involved in less serious, non-violent crimes. Incarceration was viewed as particularly harsh; potentially doing more harm than good. There was also a perception that many young offenders need more than one chance to change their attitudes and the behaviours that bring them into contact with the law. A restorative approach might work here. Early face-to-face meetings with their victims was viewed as potentially beneficial to both the youth involved and his or her victim in certain cases. However, the same caveats were raised in relation to VAWIR-type offences, sexual assault, hate crimes, child sexual abuse, and criminal harassment. These offences should not be eligible for informal resolution or alternative measures regardless of the age of the offender.

3. More Appropriate Way of Dealing with Offenders on Less Serious, Non-Violent Offenses

There is some support for diversion/alternative measures and restorative programs they are strictly restricted to first-time offenders who have committed relatively minor, non-violent offenses. While generally supportive of reforms which would implement a restorative focus within these very particular confines, these same individuals questioned the extent to which it was necessary to do so. Basically, a number of interviewees observed that the criminal justice system presently does not “process” this type of offender — particularly if a first-time offender. There was a perception that the majority of less serious, non-violent offenses that are presently charged and prosecuted involve repeat offenders.

A further observation was that the category of “violent” offenses includes a wide range of behaviours. For some of those behaviours we may not want to preclude the possibility of diversion/alternative measures — for example, the bar brawl. This observation however is premised on the assumption that sophisticated gender/diversity/equality rights analyses inform the core of the entire Framework. Only then can we begin to consider offences of violence of the

barroom brawl variety.

This limited use of restorative programs was often suggested as a possibility only after it was made clear that there was no room for the consideration of diversion/alternative measures or restorative programs in sexual assault cases, child sexual abuse cases, violence against women in relationships, criminal harassment or any other offence where the dynamic was one of abuse of power or trust or characterized by unequal power or the crime was motivated by hate. The existence of the "exceptional circumstances" provision in relation to many of these types of offences is what is considered as the "weak link" in the policy reform. At the time of the interviews in April and May of 1997, the availability of restorative justice programs in relation to these types of offenses was not categorically dismissed although extreme caution was advised with respect to "exceptional circumstances". In this regard, the need for a great deal more information about restorative justice programs generally and what the province is specifically endorsing was evident in the responses. Other questions and issues raised in the June 1997 paper included:

- Who is going to determine the seriousness or level of violence inherent in a particular offense?
- Is that determination made in consultation with the victim? with police-based victim services? with specialized victim services?
- Are sufficient additional resources being made available to cover the increased workloads and costs which are likely to accrue to police and victim service providers?
- What mechanisms are in place to monitor diversions from police, Crown counsel and Corrections?
- How are breaches of diversions being monitored so that charges can be laid?

Update:

Answers to the first two questions are difficult to ascertain. The MAG is still proceeding on the basis that the reform initiatives as presently formulated are workable. There are some indications that input by victim services providers and women's groups is having some positive impact. For example, the direction to Crown Counsel to consider whether "considerable physical harm was caused to the victim" has been expanded to also include "or psychological harm". (See Crown-Counsel's Interim Policy on Alternative Measures for Adult Offenders). On the other hand, the Province remains committed to retaining "exceptional circumstances". It is likely that the VAWIR table will be charged with its definition.

What has been reiterated by specialized victim services providers is the need to underline the seriousness of offences involving violence against women and the corresponding need to consider various types of offences in the context of the dynamics of violence against women in relationships and post-separation abuse. In these contexts, all offences are serious and behaviours which might be considered relatively innocuous in other situations have to be treated seriously and recognized as forms of violence. Unfortunately, resources were unavailable to re-interview these same individuals on a one-to-one basis to ascertain their reactions to the Framework *CAP Information Package* as well as to other developments in the policy process itself. However, it was evident from a follow-up teleconference call with many of these same individuals that their resolve has hardened around some of these issues — in particular, the

"exceptional circumstances" provision.

The consensus of victim services providers, particularly specialized victim services providers, is that the exceptional circumstances provision(s) should be eliminated in relation to cases of sexual assault, VAWIR, child sexual abuse, criminal harassment, and hate crimes. In short, there should be no exceptional circumstances provision in the policy until such time as there are appropriate funds, resources, training and provincial guidelines in place to educate, guide and monitor its application.

On the question of additional resources to victim services providers — there will be none.

(iv) Increased Community Responsibility

The emphasis on the need for communities to take on more responsibility for resolving minor "conflicts" between individuals was viewed as a potentially positive contribution of restorative justice thinking. There was, however, some degree of skepticism as to how such an objective could be effectively accomplished as well as an acknowledgement of the dangers inherent in conceptualizing certain types of offenses as "conflict".

Measures related to young offenders which increased the participation of communities were seen as potentially positive developments IF those measures included sustained support/intervention in the form of, for example, meaningful training programs or job opportunities which require resources and coordination. Measures directed at both adult and youth offenders which were preventive in nature had the most support. In fact, a restorative approach which anticipated an expanded role for communities in the prevention of crime would likely garner more support.

There was also some interest in a flexible definition of "community" that is inherent in some of the restorative justice literature/media. There was an acknowledgement that "community" need not be limited to geographic parameters — that, in fact, "communities of interest" are often the most relevant constellations of support/criticism. A flexible definition of community is also necessary to address the absence of traditional notions of community in some large urban centres.

Given the increased role for communities in all formulations of restorative justice, the need for the development of clear, equality-promoting principles and Guidelines which would define the parameters of all community-based restorative programs across the province is evident. While flexibility has some advantages, there is arguably a higher obligation on the Province to ensure a fair, consistent and equitable approach to restorative justice initiatives.

Update:

The *CAP Information Package* has provided for a flexible interpretation of community — an interpretation that is not geographically determined. This is a positive feature of the Package as it keeps the door open for other types of communities to consider the utility of CAPs.

The Guidelines for Community Accountability Programs produced as part of the *CAP*

Information Package (p. 11) fail to address many of the concerns raised in the June 1997 draft of this Paper. –Provincial standards for these programs do not seem to be contemplated. Even more disconcerting is the fact that the entire section on Guidelines is couched in the language of recommendations. The Ministry only " recommends" that all community accountability programs incorporate the– Guidelines into their operating procedures and that each program develops practices that are consistent with the principles of restorative justice. Further, these programs are cautioned to " not accept cases such as violence against women in relationships, sexual assault, child abuse and hate crimes". Criminal harassment is omitted from the list. This is the only guidance provided with respect to these serious offences. The Information Package goes on to recommend that these programs review the categories of offences provided in the Crown Counsel Alternative Measures Policy, to ensure that they do not accept referrals for cases fitting into Categories 1 and 2. At its most optimistic, this latter recommendation assumes a measure of legal expertise and an understanding of the unique dynamics of male violence against women, child sexual assault, sexual assault, hate crimes, and criminal harassment.

5. Perhaps Beneficial to Some Female Offenders

To the extent that female offenders disproportionately come into contact with the criminal justice system for property crimes like fraud, there is some sense that reforms which reduce the likelihood of incarceration for these types of offenses will likely benefit this group of offenders.

6. Potential to Increase the Effectiveness of VAWIR (and Child Sexual Abuse and– Sexual Assault) Policy

One interviewee expressed the view that there may be the potential increase the effectiveness of the VAWIR Policy (and Child Sexual Abuse and Sexual Assault Policies) with the adoption of a restorative approach that approach is absolutely restricted to non-violent offenders who commit minor offences. But this potential can only be realized if there is absolute clarity and genuine commitment to the exclusion of VAWIR and other similar offences from restorative justice initiatives. This clarity and commitment must be reflected throughout the criminal justice system — not just at the policy development stage, but also at the level of implementation.

Further, it will be critical to ensure that the same clarity and commitment is reflected in any other restorative justice initiatives that are likely to be introduced at other junctures in the criminal justice process.

If restorative approaches are adopted to deal with minor, non-violent offenses, there may be considerable symbolic value in the continuation, and even elevation, of state sanctions against the entire range of offences involving violence and abuse against women and children as extremely serious crimes against women the state. The same reasoning applies to hate crimes, criminal harassment and any other offences which are directed at members of marginalized or vulnerable populations.

Update:

The most effective way to deliver the message that violence against women and children will no

longer be tolerated is to amend the Restorative Justice Framework in relation to these types of offences to expressly (i) prohibit diversion and alternative measures, and (ii) eliminate the "exceptional circumstances" provision. The rationale for this exclusion should be made clear, that is, the appropriate societal response to this type of offence is not to require an apology, it is to require change. Further, the objective of "restoring" an abusive relationship is not a legitimate societal goal and victims of male violence do not necessarily want to be central to the restorative process.

(ii) QUESTIONS, ISSUES AND CONCERNS

1. The Absence of Victim Services and Women's Equality-seeking Groups in the Process

The absence of consultation with victims services providers (particularly specialized victim services) and women's equality-seeking organizations (i.e. LEAF) in relation to any part of these reform initiatives was the cause of major concern for many of the individuals interviewed for the June 1997 draft of the paper. On its face, this omission seemed like a glaring oversight on the part of government policy makers. The depth of the oversight was compounded by the absence of representatives from Victim Services Division from internal discussions in the Ministry during the initial stages of policy development.

One explanation suggested at the time by government officials for the absence of these stakeholders in preliminary and ongoing discussions was that a public commitment to the VAWIR Policy with respect to diversion had been made and that diversion/alternative measures is simply not being contemplated for serious, violent offenses. Consequently, the Ministry reasoned, the interests of the women and children as victims of violent crimes were protected because these offences would not be subject to the reform measures. However, this explanation did not seem adequate upon consideration of the following issues and questions and in light of the reality of the "exceptional circumstances" provision.

a. The Central Role for Victims in Restorative Justice Generally

On its own terms, restorative justice is touted as a victim-centred approach — it is all about bringing the victim back into the process. The Ministry's conceptualization of restorative justice appeared to coincide with this emphasis on the victim and victim needs³⁰.

However, the same Ministry was at a loss to explain how determinations were being made about victims' and women's needs without any representation from the individuals who have that expertise, namely victim services providers and women's equality-seeking groups. Nor was there any acknowledgement that in VAWIR-type cases, victims often do not want to be central to the process, they want support so they can "restore" lives in a dignified way.

b. What is the Effect of the Absence of a Gender-based or Equality Analysis

There are a number of ways in which a gender or equality rights analysis might serve to illuminate some of the problems with restorative programs for offences involving violence against women. This is important because:

- (1) While the B.C. government has provided assurances that VAWIR and other similar offences will not be diverted to community accountability programs, these assurances are not necessarily forthcoming in other jurisdictions; and
- (2) In the abstract it is very difficult to unpack just what it is about these principles which contemplate the restoration of relationships, holding offenders accountable, and the involvement of the community in solutions that requires a measure of caution.

For women attempting to separate from an abusive partner and/or who may report an assault by their present or ex-partner, the potential impact of these reform principles are doubly disconcerting given that the restorative approach adopted in B.C. covers both civil and criminal justice systems.

- Consider their potential application in the context of a post-separation assault. A restorative approach to the crime of assault might require that the offender admit his guilt, apologize to the victim, work to repair the relationship and do some community service work to make amends to the community. The same woman who was the victim of the assault in her civil case, would sit opposite her abuser as an equal party ready to negotiate the details of the separation and divorce — perhaps with the assistance of a trained negotiator.
- Consider a sexual assault case that gets referred to a victim-offender reconciliation program. Even the title of the program speaks volumes of what the victim can expect the agenda to be and, as a corollary, what is expected of the victim. Numerous questions immediately come to mind. For instance, what type of support is provided to the victim to assist her in making a decision to participate or not. If she does participate, what kind of ongoing support can she depend on?
- Consider the case of a lesbian living in a small town who is assaulted because of her sexual orientation. If the case is sent to a Community Accountability Panel, she will be outed. What skills and training related to the victim's experiences can members of the CAP be expected to have?

Without full representation from victim services providers and women's equality seeking groups:

- Who is providing the Ministry with the necessary gender-based analysis of these initiatives on an ongoing and dedicated basis — particularly in relation to violence against women?
- When the Ministry does present victim services providers and women's equality seeking groups with opportunities for feedback, are they listening to that feedback and making the requisite changes?

While there are assurances that VAWIR-type offenses are excluded from these reform initiatives:

- Who is determining what constitutes violence and what offenses are considered less serious? For example, what is being done to ensure that certain types of offences, like

trespass at night, (a Category 3 offence subject to diversion by police) are designated as K-files when they are perpetrated in the context of a dynamic of abuse and violence. Similarly, elderly people are particularly vulnerable to home invasions, trespass at night, mischief, theft, fraud and vandalism. What is being done to ensure that offences against elderly persons are considered from their perspective?

- Are the categories informed by an analysis of the dynamics of violence against women and children in all its various manifestations? Are particular offenses subjected to the same analysis? (for example, the power and control which characterize VAWIR-type offenses, the power dynamic which characterizes many sexual assaults, the obsessive and terrorizing dynamic of criminal harassment, the misogyny, racism and/or homophobia that characterize many hate-motivated crimes?)

Without the necessary expertise it is often not possible to see (1) the "violence" and (2) the degree of severity without a gender analysis.

Further, a gender analysis of the criminal justice system also reveals that many offenses are disproportionately committed by either women or men. The implications for female offenders of these initiatives may be significantly different from their male counterparts. Women's equality-seeking groups are well placed to identify those issues.

As well, an equality analysis would highlight the particular implications of these restorative initiatives for members of all marginalized groups. The issues of concern of aboriginal women would be taken into consideration as would the implications for persons with disabilities – as offenders and victims. There has been as yet no express consideration in the Ministry's materials of the implications of these initiatives for women (or men) with disabilities — what types of accommodations will be supported by the Ministry so that women with disabilities can participate in CAPs on an equal footing with others and with appropriate victim services support as well. What sorts of "exceptional circumstances" might apply to a case involving the sexual assault of a woman with a learning disability?

In addition there is a need for an equality rights analysis of "alternative measures" as provided for—Criminal Code, particularly the phrases "not inconsistent with the protection of society" and appropriate having regard to the needs of the (offender) and the interests of society and of the victim". It is easy to see how some interpretations of these phrases could lead to the re-privatization of VAWIR offences as a "family problem", blame for sexual assault could be attributed back to the victim and hate crimes could be explained away by things like the "homosexual panic" defence.

c. Losing the Victim's Perspective — What Can We learn from Other Jurisdictions?

The experience of Britain with the introduction of mediation services into the criminal justice system is instructive in this regard. Helen Reeves documents some of the problems/issues for victim support services caused by the advent of mediation and reparation schemes in that jurisdiction.³¹

In the early stages the lack of information as to the views or attitudes of victims of crime towards the proposed reforms was a significant problem for policy makers. As a consequence policy makers were not ready to deal with the negative reactions of some victims to the reforms.

Similarly, there was an explosion of interest within the "criminal justice community" with respect to mediation and reparation projects which occurred with the announcement of the availability of government funding. As a result of the funding announcement, proposals came from probation services and other offender-focussed agencies to set up programs — the lack of contact of these agencies with victims soon came to be recognized as a major obstacle to their success.

Further, some of the assumptions that had been made about the benefits of such services for victims were shown to be erroneous. Finally, Reeves points out, the focus on the offender meant that victims needs were not taken into account in the design of these programs:

The central questions which should be asked, therefore, related more to the victim than to the offender. The length of time which has elapsed since the crime occurred is likely to have a major bearing on the victim's state of mind, as will the degree of severity which the victims attribute to the particular crime and the way in which they are managing to cope with the experience, including the amount of support which is available. ... the cases referred to mediation projects so far have tended to be selected by the stage the case has reached in the criminal justice process and by the attitudes of the offender at critical points in that process.³³

There are other indications in the literature that there is a propensity for victims to be marginalized in many of these programs — that the implementation of restorative measures can often leave the victims by the wayside.³⁴ One New Zealand study found that victims attended less than 50% of a sample of family group conferences. While some victims cited lack of interest and time constraints as reasons for not attending, the vast majority indicated they had not attended because:(i)they had not been invited; (ii) they were unable to come at the designated time; or (iii) they—had not been informed far enough in advance.³⁵

d. Summary and Update

In the June 1997 draft of the Paper it was noted that to begin to frame a reform initiative with such wide-ranging implications without input from representatives from all the key stakeholders is at best an oversight and, at worst, fatal to the integrity of the process. Either way the potential for success was limited from the outset by this oversight.

On a practical level, the lack of participation and involvement by these two key partners, victim services and women's groups, also contributed immeasurably to the confusion which already surrounded these initiatives. On a more urgent note, the point was made that the absence of input from these stakeholders had the potential to seriously compromise the safety and security of women and children in this province.

Since June of 1997 there has been a shift in terms of the MAG's recognition of the importance of

having some form of representation from victim services providers and Victim Services Division. Where no input was sought before, there is now at least the acknowledgement that there is a need for representation by and consultation with these stakeholders. However, it is difficult to ascertain the extent to which MAG is listening to the feedback that is being delivered and whether there will be a corresponding shift of any significance with respect to some of the more critical aspects of these policies. Below is an outline of some of the developments which have occurred since June 1997:

- Since the first draft of this Discussion Paper was tabled in June of 1997 Victim Services Division has created an ongoing Round Table on Restorative Justice which has met five times to give input to draft policies and continue to put issues on the table. BCASVACP and BC/YSTH have been invited as well as representatives from police-based programs and aboriginal programs. The Restorative Justice Round Table was identified as a mechanism to allow community input. Members of the Group were asked to provide feedback on a draft framework document and the Community Tool Kit. There were also assurances from the MAG that they would be consulted before the draft Crown Alternative Measures Policy was signed off on.
- Victim Services Division has been invited to a few of the Restorative Justice Committees within the Ministries that they had not been able to access before.
- There has been an agreement reached with the Criminal Justice Branch on the policy on diversion and alternative measures. The criteria that diversion would not take place if serious physical harm had been done, has been expanded to include “or psychological harm”.
- Agreement was also reached that for all of the diversion cases, both the Regional Crown Prosecutor and the Director of Vulnerable Persons must agree.
- There is no agreement on "exceptional circumstances". MAG maintains its position that the allowance for "exceptional circumstances" in Category 1 and 2 offences is required in order to refrain from [illegally] fettering the discretion of police and Crown and their designates. The Association's position is that the operationalization of an “exceptional circumstances" provision will result in a watering down of the VAWIR Policy and allow for the uneven interpretation and application of both VAWIR Policy and exceptional circumstances across the Province.
- In late March of 1998 MAG organized community consultations in New Westminster and Nanaimo inviting over 700 individuals and groups who represent many of the stakeholders on these issues. According to MAG officials training priorities for CAPs have been refocused as a result of feedback obtained during the sessions.³⁶
- MAG is in the process of developing a comprehensive framework for the evaluation of CAP which is a pilot project. The Ministry anticipates that a great deal of evaluative work will be done over the next two or three years to delineate both the intended and unintended outcomes of CAPs as measured against their objectives. Once this evaluation

work is completed, the Ministry will be in a better position to determine whether and how: (i) to expand CAP as a province-wide program, and (ii) to track diversion/CAP cases province-wide or across Canada. (Alternative measures are currently tracked across the province).³⁷

2. Violence Against Women in Relationships Policy ("VAWIR Policy")

Senior Ministry staff have made a number of public statements reaffirming the Ministry's strong commitment to the VAWIR policy, particularly in relation to diversion/alternative measures. However, the absence of victim services advocates "at the table" had contributed to suspicions and concerns that integral aspects of that Policy were not being considered. There was further concern and suspicion that other critical issues and questions with respect to criminal justice reform initiatives also remained unaddressed.

The discussion which follows is limited to underlining some of the issues/questions which are raised in relation to the VAWIR Policy. It is safe to assume that similar issues and questions would also pertain to the Child Sexual Abuse and Sexual Assault Policies once they are finalized. Further, there is also a need to identify what issues are germane to criminal harassment, hate-motivated offenses and all other offenses related to violence against women. That task is left for a later date.

The fact that the implications of these reforms for offences involving violence against women and children are front and centre in the minds of many service providers should not come as a surprise to policy makers given:

- (1) the ongoing problems of compliance with and enforcement of the VAWIR Policy as it now stands,³⁸
- (2) the use of conditional sentencing by judges to "discount" sentences to offenders found guilty of sex or other related offenses against women and children.³⁹

The bottom line is that the Ministry has to take into account the wide opportunity for divergence which arises between a statement of commitment to the VAWIR Policy and the implementation and interpretation of that same Policy by police officers, Crown counsel and other criminal justice personnel. When "exceptional circumstances" is added to the equation, there is increased opportunity for further divergence. There are particular aspects of the VAWIR discussion, or lack of it, that are of particular concern; namely: (1) the expansion of police discretion; (2) the potential implications of the "exceptional circumstances" provision; (3) the assignment of responsibility for determinations of "exceptional circumstances"; and (4) the failure to take into account some of the concerns raised in the critical literature.⁴

a. Expansion of Police Discretion

Concerns specifically related to the VAWIR Policy were expressed with respect to the expansion of police discretion and the proposed appointment of police as agents of the Attorney General for the purposes of alternative measures. While it was acknowledged that some police and RCMP officers have a good knowledge and understanding of the dynamics of power and control in

abusive relationships, the concern rested with those members of both forces who did not share that expertise and would be perfectly comfortable with the notion of referring these cases to diversion, VORP's or family group counselling, if those programs existed in their community. The full implications of this proposed reform have to be examined once more information is available. Again there is a need to explicitly tie this expansion of police officers' role with training and education issues related to violence against women'

b. The "Exceptional Circumstances" Provision

A number of issues/questions were identified in relation to the "exceptional circumstances" provision contemplated in the draft Diversion Guidelines reviewed for the purposes of the June 1997 Paper. Those issues/questions were:

- What is the present compliance rate with diversion policy throughout B.C. with respect to offences involving violence against women and/or children?
- What types of cases are contemplated as fitting within the parameters of "exceptional circumstances"?
- Why is this exception there?
- What mechanisms exist to take advantage of the expertise of victim services providers/women's advocates in assisting with determinations of "exceptional circumstances".

The response in the June 1997 Paper was that until "exceptional circumstances" was completely removed, it seemed expedient to insist that determination of "exceptional circumstances" included a team approach. For example, a team of police and specialized victim services personnel or Crown and specialized victim services personnel were seen as more likely to assess these cases with a more critical eye.

The position taken by BCASVACP is now clear and unequivocal. The "exceptional circumstances" provision should be eliminated in relation to VAWIR, sexual assault, child sexual abuse, criminal harassment, and hate-motivated offenses until there is an opportunity to conduct all of the necessary research, analysis and evaluation of these initiatives and consult with all of the affected parties.

There is a need to ascertain the views of aboriginal women in relation to the application of VAWIR policy. According to police services, some aboriginal communities want the offenders in VAWIR cases to be diverted because they have no faith in the criminal justice system. It is unclear however whether the views of aboriginal women are taken into account by these communities or if police services have solicited their views. What is clear is that MAG should move quickly to contract for some independent research and consultation with aboriginal women in order to ascertain their views and perspectives on the application of VAWIR in this context.

Increasingly, the rationale for "exceptional circumstances" is being tied to MAG concerns about illegally fettering the discretion of police and Crown, that is, the "exceptional circumstances" provision allows for the exercise of discretion in these types of cases. In this way, presumably, MAG is attempting to insulate VAWIR and other similar policies from legal challenges.

This concern with fettering discretion comes in the wake of a small number of lower court decisions in which decisions taken by police and Crown counsel on VAWIR cases have met with disapproval from the Bench. Yet it is not clear from the cases that the problem lies with the fettering of discretion rather than insufficient training and education of justice system personnel as to the rationale of the Policy; the dynamic of VAWIR cases and the consequent need to make arrests and prosecute the offenders.

The safer approach to addressing these types of legal challenges might be found in allowing for more time for Crown counsel to prepare for VAWIR cases where these types of arguments are likely to arise and in the development of a Section One *Charter* defence of VAWIR Policy in relation to police and Crown discretion which would provide all justice system personnel with a rationale for and defence of the policy based on constitutional principles.

Without all of the details it is difficult to comment on this issue fully. Suffice it to say that the VAWIR Policy simply provides direction to police and Crown who still have to apply the standard of the Criminal Code. There is certainly a strong argument to be made in favour of MAG policies which introduce province-wide standards to guide the administration of justice in this province and which are designed to improve the safety and well-being of women, children, minorities and other marginalized groups. The key is to communicate their importance to other justice system personnel.⁴

c. Regional Crown Assigned Responsibility for Determinations of "Exceptional Circumstances"

In the draft Diversion Guidelines for Police reviewed for the June 1997 version of the Paper, Administrative Crown Counsel or their designate(s) were identified as the individuals who could determine if "exceptional circumstances" existed to warrant a VAWIR or sexual assault case being subject to alternative measures. The assignment of responsibility for this determination to a senior administrative Crown was seen as a positive feature of the draft Guidelines. It is recognized, however, that the test is in the implementation as similar restrictive designations of responsibility in the past had been watered down as caseloads increased. Further, the need to explicitly tie that assignment of responsibility to training and education on the types of issues outlined in this Paper was underlined. The Interim Policy for Crown Counsel on Alternative Measures for Adult Offenders contemplates that Regional Crown or their designates as having exclusive jurisdiction in relation to "exceptional circumstances" cases.

d. Substantiation of Concerns in the Literature

A brief review of the literature indicates that restorative justice processes (e.g. VORPs and family group conferencing) are sometimes touted as capable of addressing serious offenses involving violence including wife assault and sexual assault cases⁴⁰. Indeed, the suggestion has been made that restorative justice model "offers opportunities for victims and offenders to effectively address wife assault situations which have come to the attention of police, community groups and/or the criminal courts."⁴¹ This is where some of the concern is coming from.

In addition, there is a great deal of critical literature on the dangers of family mediation for women attempting to leave abusive partners in family law cases⁴². There may be some critical literature emerging with respect to various aspects of restorative programs but there has been no opportunity to collect and review it. All of this literature needs to be identified, collected and reviewed in order to better inform our analysis of these issues.

3. Degree to Which Initiatives are Budget-Driven

The extent to which restorative justice initiatives and diversion/alternative measures policies are being introduced as cost-cutting, deficit-reduction measures remains a concern. It was generally agreed that cost savings was an objective of the current reforms. There was some divergence in opinion as to the extent to which this objective trumps all others.

If the British Columbia government is embarking on these reforms primarily as a way of saving money, a different and much harsher light is shed upon the whole process. The rudimentary appeal of restorative approaches is completely stripped away. It is clear that such a major reorientation of the criminal justice system requires resources. Rather than talking about communities assuming responsibility in partnership with offenders and victims to prevent crime and facilitate reparation for offenses committed, we are instead looking at the unilateral devolution of government responsibility for the administration of criminal justice in the province.

There is a clear need for the requisite resources to develop provincial standards and training programs for all of the various aspects of, for example, Community Accountability Programs. Without these resources, the restorative justice initiative is essentially an exercise in off-loading criminal justice responsibilities onto the local community with no additional resources to deal with these added responsibilities⁴³.

a. Implications for Research, Analysis and Evaluation

There is another way in which the "use of existing resources" mantra raises concern. Given the, by and large, "uncharted" territory the British Columbia government is entering in terms of these restorative justice initiatives, there would seem to be a requirement for substantial resources to be dedicated to research, analysis and evaluation.

At a minimum, the experience of other jurisdictions should be subjected to scrutiny with particular attention paid to the implications of similar initiatives for all victims but especially for women and children who experience male violence and abuse and other victims of violent crime. While top level government bureaucrats have visited other jurisdictions on information-gathering trips, it is unclear the extent to which the focus of these trips was on ascertaining the effects of these programs on women, children and other marginalized persons.

In addition to the apparent information gaps identified in this Paper, as of June 1997, the federal Department of Justice had identified a "Top Twelve" list of research questions on restorative justice in addition to the key research questions. The three key research questions in restorative justice are the same as those which attach to any justice initiative generally; they are:

- (i) Does the initiative work (however defined, because different initiatives will have different aims)?
- (ii) Why does it work or not work? and
- (iii) Does it have any significant side effects which much be considered?

The "Top Twelve" research questions are more specific to restorative justice; a sample includes:

- (i) What kinds of cases are most likely to "work" within restorative justice?⁴⁴
- (ii) What are the limits to the state's willingness to accept solutions by and from the parties and the communities involved?
- (iii) What is the proper interface and mix between elements of the criminal justice system and elements of restorative justice?
- (iv) To what extent does the victim have a greater — or lesser — influence on the process and outcomes under a restorative justice initiative?
- (v) What is the variance of opinion among the parties and community members about the restorative justice process and outcomes?
- (vi) When is an agency and/or community ready to take on cases in a restorative justice initiative?
- (vii) What is the quality of the consent given by the victim, offender and community to the creation of the restorative justice initiative and to the decision to enter into a restorative justice process in a particular instance? and
- (viii) Is the restorative justice option more or less intrusive than the option which would be available under the usual course of business in the mainstream system.

It is not known at this time how far along the federal Department of Justice is in relation to their research of these issues. Nor is it clear what criteria are used to measure what "works". Is it victim satisfaction? decreased recidivism? community satisfaction? There are of course a host of other questions which also need answers with respect to particular types of offenses and offenders. Once the results of the research and analysis into these questions are made available and key stakeholders have had an opportunity do their own research and consultation, everyone will be in a better position to assess the relative merits of restorative justice initiatives.

Update:

MAG is in the process of developing a comprehensive framework for the evaluation of community accountability programs. As a pilot project, MAG recognizes the need to do a great deal of evaluative work over the next two or three years on CAP to measure. This evaluation process will inform the decision-making process regarding whether and how CAP would be implemented throughout the province.

b. Other Budget-related Concerns

Underestimation of Costs: The government has consistently underestimated the cost of running these programs and managing volunteers. Similarly, the extra costs involved in providing support for victims throughout the system has been overlooked. Over-reliance on community resources will work to ensure the failure of these programs since the community has limited

resources as well.

Implications for Education and Training: Significant additional resources will be required to conduct the necessary training and education of ALL the stakeholders in the criminal justice system.

4. Consideration of Implications for Ethnic/Cultural Communities

There is an additional concern that the implications of these reforms for ethnic/cultural communities have not been studied in any kind of systematic or rigorous fashion. The implications of restorative justice initiatives in a country as culturally diverse as Canada need to be addressed.

"Reintegrative shaming" that comes out of a family group conference may mean something positive for a white offender in Australia but something completely different, and not necessarily positive, for a Canadian who is of Korean or South East Asian heritage. This type of cultural and ethnic nuance has to be examined through research and consultation.

Further, where English is a second language, there is a need to ensure that translation services are an integral component of both local victim support services and community-based restorative programs.

Representatives of ethnic/cultural communities need to be involved in the development of policy around these initiatives. Extensive consultation with members of these communities should be conducted. As well, there are victim service providers who are themselves members of these communities and/or have significant expertise with respect to the identification of the issues for offenders and victims who come from these communities. Similarly, these same individuals are aware of what types of support services are required for victims from these communities.

Update:

Ernie Quantz has indicated that the Alternative Measures Training Committee and Corrections Branch will be directed to take into consideration language and cultural barriers.

Consideration of Implications for Gay, Lesbian, Bisexual and Transgendered Communities

Other than a reference to hate-motivated crimes in the Workshop on Expansion of Diversion: Discussion Guide, there is little indication that the implications of these reforms for gay men, lesbians, bisexuals and transgendered persons have been considered. It is readily apparent that restorative justice initiatives have the potential to seriously compromise the safety and security of gay, lesbian, bisexual and transgendered victims who live in intolerant communities. These concerns are raised in addition to the concerns which apply generally to victims (and offenders) —many of which also apply to these communities.

Members of these communities are particularly vulnerable to physical violence and other offences involving intimidation because someone knows or suspects they are gay, lesbian,

bisexual or transgendered. The offences involving physical violence are not necessarily identified as hate-motivated crimes nor are "non-violent" offences like vandalism which can involve a great deal of intimidation or harassment based solely on the victim's sexual orientation or gender identity. Yet without an awareness of the dynamics of homophobia, it is likely that perpetrators of these offences, when they are caught, are likely to be diverted to a restorative justice program given the current categorization of offenses.

Some of the potential problems with this kind of scenario are immediately apparent. The questions that come to mind include: (i) what safety mechanisms exist for those victims, particularly youth, in terms of being "outed" in an intolerant community; and (ii) what kind of reparative agreements are likely to be arrived at? Further, what steps will be taken to ensure that exceptional circumstances cannot be interpreted in such a way that, for example, the homosexual panic defence can be used as the basis to divert or proceed with alternative measures in relation to sexual and serious physical assaults of gay men, lesbians or bisexuals.

For the gay offender who admits responsibility for an offence which has nothing to do with his or her sexual orientation, how is his or her privacy protected when community people are conducting assessments or screening for a particular program? And how is the young offender protected if and when the community accountability program decides (and his or her parents agree) that what is needed is psychological counselling for both the offending behaviour and the "deviant" sexual orientation?

Government policy makers must take these issues into account. A significant body of research literature is emerging that documents the relatively high level of violence and abuse experienced by members of these communities. The violence and abuse is perpetrated by strangers, acquaintances, family members and within intimate relationships. At the very least, this literature should be collected and reviewed. Further, the gay, lesbian and bisexual community should be consulted on these and other related issues which have not been identified here.

Update:

A limited number of inquiries revealed no further information that could be included in this Update.

Screening for Appropriateness

The use of screening tools to determine participants' appropriateness for a particular restorative program or the need for specialized support services also raises a number of questions and issues including:

- Have separate tools been developed for victims and offenders?
- Do these tools assist in identifying mental health problems and/or learning disabilities which may make the participant an inappropriate subject for a restorative program or identify the need for specialized supports?
- Do the victim-oriented tools expressly assist in identifying histories of victimization particularly with respect to sexual offenses of prospective participants?
- Do offender-oriented tools identify obsessions and typologies of those offenders who engage in behaviours like criminal harassment?

Update:

CAP Information Package does not contemplate the use of screening tools for victims or offenders. *Getting Started: A Step-by-Step* (the Guide) recommends that CAPs consider developing and implementing policies and procedures with respect to the following:

- Confidentiality
- Criminal Record Checks
- Reference Checks for Volunteers
- Record Management
- Complaints, Critical Incidents and Liability
- Program Evaluation

There are recommendations made around screening volunteers for the program. The recommends that the program "consider developing a policy on criminal record checks for potential volunteers". Interestingly, there are no recommendations for the development of policies and procedures in relation to Conflict of Interest issues or specialized training needs.

7. Net-widening

A series of National Crime Prevention Council cross-country consultations pointed to "net-widening" as one of the weaknesses in the implementation of alternative measures. In practice, alternative measures are seen to be widening the ambit of the criminal justice system rather than restricting it to the more serious, high risk, repeat violent offenders. Key stakeholders are seeing alternative measures being used against mainly young offenders who would not even have been brought into the justice system under the previous regime. For example, some of the young offenders who participate in alternate measures programs would likely receive only a warning or caution from police if the alternative measures program did not exist.⁴⁵

8. What about the Charter of Rights and Freedoms Procedural Protections?

Conspicuously absent in the discussion of Diversion/Alternative Measures and the implementation of restorative justice initiatives is any reference to the role of the Charter of Rights and Freedoms. There are no references to the panoply of procedural rights afforded to accused persons, for example, the right to counsel, the right to an interpreter, or the right to remain silent.

b. An Equality Rights Analysis?

Similarly, there are no indications as to what an equality rights analysis of these criminal justice reforms might look like or that one has been done. Government is constitutionally obligated to ensure that its laws and policies do not infringe on individuals' equality rights.

Section 15 of the *Charter* guarantees the right to equality — to the equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. Judicial interpretation of the section has led to the

expansion of the list of enumerated grounds to include sexual orientation.

c. The Availability of Legal Aid Counsel

A related question has to do with the availability of legal aid counsel for accused persons who might be considered for diversion/alternative measures. Besides the obvious representation issues, there is a need to ensure that the legal aid criteria are not tightened to exclude those offenders who are "presumptively" candidates for diversion/alternative measures. By tightening the criteria or otherwise restricting access to legal aid counsel — "alternative" measures are only alternatives for the state — not for the offender.

Update:

One of the key elements underlying the philosophy of the *Restorative Justice Framework* recognition of the important role of government is to ensure adherence to the provisions of the *Charter of Rights and Freedoms* and the *B.C. Human Rights Code* in all laws and policies and in the delivery of all programs and services.

The principles underlying the *Restorative Justice Framework* include:

Fairness: Both collaborative dispute resolution mechanisms and restorative justice processes will be procedurally fair and in accordance with the principles of natural justice. Settlements and agreements will be fair and equitable.

Equity: To achieve fair and satisfactory outcomes both must address a lack of equity or significant power imbalance between the parties.

There is however no further explanation or illustration of the way in which these principles ought to be interpreted and/or how the principles are to be implemented in the context of CAPs.

9. Accountability

The need to ensure accountability was maintained throughout the system was underscored. Suggestions included the design and implementation of complaint/appeal mechanisms, which would allow any participants (victims, offenders, criminal justice personnel) to register their dissatisfaction with a particular procedure, decision, or outcome.

Update:

The Guidelines of the Community Accountability Programs Information Manual recommends that each program establish a complaints process that is accessible to all of the participants.

In the Step-By-Step portion of the Manual it is recommended that each program obtain legal advice on the issues of complaint resolution, critical incidents recording and liability coverage. A Sample Critical Incident Form is provided.

10. Monitoring of Diversion Incidents/Agreements

The design and implementation of a central database to monitor diversion (both informal and alternative measures) incidents and compliance with agreements across the province was viewed as crucial to ensuring women and children's safety. The need for such a database is reflected in concerns raised about the possibility of inappropriate police diversions in relation to, for example, sexual assaults. Further, this database should be developed in conjunction with other provinces so that it will provide a means of coordinating the tracking and monitoring of diversion/alternative measures' agreements across other provinces as well.

Update:

It is important to distinguish between tracking and monitoring of CAP cases and alternative measures as the latter types of cases are tracked province-wide. At this time, the development of a similar type of tracking mechanism and database is not contemplated for CAP. MAG will make these types of decisions once the evaluation phase of the program is complete.

Interestingly, the CAP Manual does provide a sample Program Data Collection Form. However no funds will be available from government to assist in the set-up, implementation and on-going maintenance of such a database.

11. Systemic Discrimination and Bias in the Current Criminal Justice System: Steps to Ensure Discrimination and Bias Are Eliminated and Not Duplicated

The degree to which systemic discrimination and bias pervades our criminal justice system has been extensively documented in recent years.⁴⁶ What steps have been taken to ensure that the level of racism, sexism, classism and homophobia which is presently experienced by members of marginalized groups is not simply going to be transferred into the community apparatus for delivering restorative justice — and thereby be even more difficult to identify and control? As Ruth Morris writes about achieving "transformative justice": "We cannot get there without recognizing the prominent role of racial, ethnic, and socioeconomic discrimination in our existing injustice system."⁴⁷

b. Other Points for Consideration

- Despite all of its shortcomings, the present criminal justice system offers accused persons **and** victims a public process — thereby assuring a measure of social and political accountability.
- Under the present system the accused also has the benefit of statutory rights of appeal and the protection of the Charter
- Our experience with informal diversion and youth diversion has shown that the "beneficiaries" of these programs are not always representative of the actual composition of that class of individuals who have contact with the criminal justice system.⁴⁸
- A key question is what mechanisms are in place to ensure that diversion/alternative measures are available to offenders who are members of marginalized groups?

PART V. - CONCLUSIONS

This Discussion Paper has identified some of the key issues and questions that arise out of proposed reforms to the criminal justice system — particularly the adoption of a restorative approach in light of the proposed expansion of diversion/alternative measures. As well, the Paper has attempted to document the extent to which there is support for and reservations about particular aspects of those reforms over the course of the two incarnations of this Paper — the first released in June 1997.

It remains clear that there exists a great deal of support for criminal justice reform for certain types of offences and offenders where the objective is finding alternatives to a system based on the retributive approach and reliant on incarceration as the deal with offenders. The restorative approach potentially offers such an alternative — or perhaps, more accurately, offers to the criminal justice system an additional tool with which to deal with less serious, non-violent offenses without necessarily resorting to incarceration. The potential of such an approach to address many of the causes for dissatisfaction with the present operation of the criminal justice system is what is appealing and certainly warrants discussion and consultation. One message which came across clearly is that the present discussion has to be expanded to include all stakeholders.

However, there is a need for caution in embracing restorative approaches to criminal justice. Other reforms like the expansion of diversion/alternative measures have significant implications for the implementation of such an approach. Those implications have to be identified and discussed in an open and constructive manner with a view to highlighting their potential effects on the safety of women and children. Moreover, an awareness of the inconsistencies that arise between policy and practice have to be continually underlined. Where women's safety is potentially compromised, the standard must be to err on the side of caution.

Caution is also warranted until the extent to which interest in implementing these reforms is driven by a cost-reduction formula can be ascertained. These reforms will likely require significant additional resources which do not appear to be forthcoming. The strategy cannot be to simply download responsibility for some offenses to the community without also providing sufficient resources to meet additional demands on present service-providers.

The questions and issues raised in this Paper provide a starting point for discussion and consultation among all the stakeholders. As our knowledge base about the current proposed reforms has expanded, It is clear that some of these issues and questions have been addressed, others have not. It is important to identify which of the questions and issues identified thus far require the more attention and scrutiny. Further, it is equally important to start to think in terms of what a restorative approach to justice might look like in this province and how we can ensure that it promotes, not detracts from, the equality aspiration of women and children to be free of violence in their lives.

PART VI. RECOMMENDATIONS FOR FURTHER INQUIRY AND ACTION

At this stage, it is possible to state that many of the issues and questions raised in the course of this Paper have either not been addressed at all or have been addressed — but only partially in the course of developing policy around the criminal justice reforms announced in November of 1996. The Ministry of the Attorney General has now released its Restorative Justice Framework Community Accountability Programs — Information Package. It is clear that many of the recommendations made in June of 1997 still apply. For that reason, they are set out again with a number of modifications and a few additions.

A. There is a clear need for immediate representation from and the involvement of victim assistance programs, specialized victim assistance programs and women's equality-seeking groups with the policy development process in relation to both restorative justice and the expansion of diversion/alternative measures.

B. There is a need for an independent examination of the intent, application and framework of restorative justice within the family justice system be undertaken, with input and involvement from appropriate, informed individuals and groups. At a minimum, the introduction of collaborative dispute resolution processes into the family justice system has to taken into account the nature and extent of abuse and post-separation abuse in order to meet the equality concerns of women and children leaving abusive relationships.

C. The speed with which these criminal justice reforms are proceeding should be slowed down until all of the stakeholders and community interests have an opportunity to review whatever Framework Document is released by the Ministry. Now that the Framework Document is released, there needs to be full, effective and supported consultation on CAP and other upcoming restorative initiatives in other parts of the criminal justice system i.e., rehabilitation, corrections, parole and so on.

D. An extensive consultation process involving all the key stakeholders should be established on a long-term basis. Sufficient funds should be provided to enable the participants in the consultation to conduct their own research and analysis in order to better advise the government.

E. Deficit reduction and budgetary constraints cannot be permitted to drive these reforms. Significant funds and resources have to be allocated to these initiatives in order to meet increased training and education needs, increased workloads on the part of police and victim services agencies and the host of other activities.

F. There is a significant gap in the Research & Evaluation component of these reforms.

1. There is an urgent requirement for comprehensive and informed Gender/Diversity Analysis as well as an equality analysis of these issues. The particular implications of these initiatives for ethnic/cultural communities and gays/lesbians/bisexuals should be identified and reviewed for the express purpose of ensuring these initiatives do not compromise the safety of members of these communities and in fact serve these communities well. As well, the implications of these initiatives for poor people, elderly people and for people with disabilities have yet to be considered.

2. Opportunities to address those research issues labeled as the "Top 12" should be made available.
3. Other gaps in the research/analysis identified in this Paper should also be addressed. For example, research and analysis to identify the ways in which restorative justice is incomplete as a framework with a view to offering suggestions as to how to fill those gaps.
4. Other legislation and policy should be reviewed with a view to determining the additional implications these restorative justice initiatives hold for other aspects of the criminal justice system. Examples include the new Police Act, the Victims of Crime Act, and the Criminal Injury Compensation Act.
5. In light of MAG's commitment to extend the restorative approach throughout the criminal justice system, it is imperative that critical analysis of all restorative initiatives, which are introduced in relation to corrections policy, treatment, parole, rehabilitation and so on, is undertaken from gender, diversity and equality rights perspectives prior to and during the development of these initiatives. These analyses should be conducted in tandem with meaningful consultation with equality-seeking groups and victim services providers. There is a need to ascertain the views of aboriginal women in relation to the application of VAWIR policy. MAG should facilitate on an urgent basis independent research and consultation with aboriginal women in order to ascertain their views and perspectives on the application of VAWIR in this context.
6. The results of this research should be made available to all interested parties.

G. "Exceptional Circumstances"

1. The "exceptional circumstances" provision should be eliminated in relation to VAWIR offenses, sexual assault, child sexual abuse, criminal harassment, and hate-motivated offenses until there is an opportunity to conduct all of the necessary research and consult with all of the affected parties.
2. Until such time as "exceptional circumstances" is eliminated, these determinations should be made in consultation with specialized victim assistance programs. This directive should be expressly written into all violence-related policies.
3. The consultation with the victim which is required under the VAWIR Policy, and is anticipated by restorative approaches, should only be conducted once the victim has had an opportunity to meet with a specialized victim services worker. This directive should be expressly written into all violence-related policies.

H. Training and Education

Training and education are required at various points in the criminal justice system as well as in the community. With respect to the former, additional training and education resources are required for Crown counsel (including Administrative Crown), police, RCMP, and corrections

personnel, victim services providers and specialized victim assistance providers.

I. Guidelines and Principles for Design and Implementation of Restorative Approaches

The Province is responsible for the development of clear, coherent, equality-promoting Guidelines and principles, which would define the parameters of all community-based restorative programs across the province. Those Guidelines and principles should be developed in consultation with victim services providers, specialized victim service agencies, and interested equality-seeking groups.

Guidelines should be mandatory in order to reflect a commitment to the principles, which inform them. Further, they should be accompanied by a more detailed and practical explanation of what these principles mean for the implementation of a CAP. Lastly, CAPs should not be left to develop their own policies on a host of issues — the Province should be providing direction and support in order to ensure consistency and a minimum standard in the operating policies of CAP's across the province.

J. Accountability

Accountability with respect to any reforms must be maintained throughout the system. One option includes the design and implementation of complaint/ appeal mechanisms which would allow any participants (victims, offenders, criminal justice personnel) to register their dissatisfaction with a particular procedure, decision, or outcome and perhaps have the opportunity to appeal.

K. Monitoring

A central monitoring system which tracks diversion incidents and agreements across the province (and perhaps a nationwide system will ultimately be required) is a necessary requirement to ensure the safety of women and children.

L. Sentencing

The Ministry of the Attorney General should do the necessary research, analysis and consultation required to recommend amendments to the Criminal Code sentencing provisions which will eliminate judicial "discounting" of sentences for offences involving violence, abuse, harassment and hate/bias.

ENDNOTES

1. The unavailability of information was a function, in part, of the fact that the policy framework is only in its developmental stages. The Framework document was unavailable at the time of drafting the initial draft.

2. Bill C-41 amended the *Criminal Code* to provide for the statutory authority for adult diversion, which is now called alternative measures, and conditional sentencing. Section 717 of the *Code* defines alternative measures to mean "other than judicial proceedings" and sets out the conditions which are prerequisite to the use of alternative measures in any particular case. Other legislative enactments like Bill C-17 [release of offenders] also might have significant implications for criminal justice reform in B.C.

3. That is, an offender who has been dealt with by way of alternative measures, can be subsequently charged and prosecuted for the original offence if there is total, or in some cases, even partial non-compliance with the terms and conditions of the alternative measures agreement. This enforcement mechanism is viewed by some criminal justice personnel as addressing a critical gap in previous diversion policies - the inability to enforce compliance with diversion agreements. With the addition of this enforcement mechanism there has been a corresponding increase in confidence in the utility of using alternative measures for some of the more serious offenses.

4. It is not possible in this Discussion Paper to canvass all of the various pieces of legislation which may be implicated in the criminal justice reform initiatives contemplated by the province of B.C. Other legislation and policy should be reviewed with a view to assessing whether there exist any additional implications in this regard. Some examples include: the new *Police Act*, the *Victims of Crime Act*, and the *Criminal Injury Compensation Act*. There is likely other legislation and policy which should be included in this list.

5. See also Valerie Oglov Restorative Justice Reforms to the Criminal Justice System - Draft Discussion Paper, Prepared for the BC/Yukon Society of Transition Houses (September 1997).

6. The first draft was produced in twelve days and did not have the benefit of a comprehensive literature review. Similarly, few resources were available to update the Paper, consequently no further research was conducted beyond contacting a few key Ministry of Attorney General personnel for information on the current state of the reforms.

7. See Daniel Van Ness, "Perspectives on Achieving Satisfying Justice: Values and Principles of Restorative Justice" A paper presented at Achieving Satisfying Justice Symposium, Vancouver, B.C. on March 21, 1997 Daniel Van Ness articulates three "foundational principles" for thinking about restorative justice generally they are:

- (i) Crime results in harm to victims, offenders and communities;
- (ii) Not only government, but victims, offenders and communities should be actively involved in the criminal justice process; and

- (iii) In promoting justice, the government should be responsible for preserving order, and the community should be responsible for establishing peace.
8. Mark Umreit and Mark Carey, " Restorative Justice: Implications for Organizational Change" (March, 1995) *59 Federal Probation* 47-54 at p. 49.
9. See for example: Minnesota Department of Corrections "Backgrounder: Restorative Justice January 3, 1995 at p. 1; Umreit and Carey, *ibid.* at 48; New Zealand Ministry of Justice, *Restorative Justice: A Discussion Paper* (downloaded from the Internet) at pp. 8 of 14. hereinafter referred to as *New Zealand Discussion Paper*]
10. See for example Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (1990) and *Restorative Justice for Victims, Communities and Offenders* (Information Paper produced by the Center for Restorative Justice & Mediation in cooperation with the Minnesota Dept. of Justice). Interestingly, there are some differences in these formulations. For example, some versions expressly recognize and promote an active role for church/faith communities. See for example: *Restorative Justice for Victims, Communities and Offenders, ibid.* and Notes for Opening Address by Attorney General Dosanjh to the Diversion Workshop held February 11, 1997. Others use the language of "healing", "reconciliation" and "forgiveness" more directly. One particular version suggests holding the community accountable for conditions which exist that contribute to crime . See the "Principles of Restorative Justice" outlined in Minnesota Department of Corrections, Backgrounder at p. 7. Another recognizes that restorative programs must operate in a way that is non-discriminatory.
11. The multitude of ways that a restorative approach to criminal justice differs from the retributive approach currently practiced are outlined in the New Zealand Discussion Paper, *supra* note 6 in ch. 2.
12. See Chapter 2, section 2 of the *New Zealand Discussion Paper, supra* note 6.
13. For an indication of the range of programs and projects which claim restorative components in Canada (with some U.S. content) see particularly: The Church Council on Justice and Corrections, *Satisfying Justice - safe community options that attempt to repair harm from crime and reduce the use or length of imprisonment* (Ottawa: The Church Council on Justice and Corrections, 1996). [hereinafter referred to as *Satisfying Justice*]
14. See: *Satisfying Justice, ibid.*, particularly pp. 62-74; Mark Umbreit and Howard Zehr, "Restorative Family Group Conferences: Differing Models and Guidelines for Practice" (1996) Vol 60, No. 3 *Federal Probation* 24-29
15. See generally: Wright and Galaway, *Mediation and Criminal Justice supra* note 14; Stella P. Hughes and Anne L. Schneider, "Victim-Offender Mediation" A Survey of Program Characteristics and Perceptions of Effectiveness" (1989) 35 *Crime & Delinquency* 217-233; Burt Galaway, "Crime Victim and Offender Mediation as a Social Work Strategy" (1988) 62 *Social Service Review* 668-683.

16. See: *Satisfying Justice*, *supra* note 6 at pp. 75-82.

17. See: *Satisfying Justice*, *supra* note 6 at pp. 50-59 and Aboriginal Corrections Policy Unit, Aboriginal Peoples Collection: *The Four Circles of Hollow Water* (Ottawa: Supply and Services Canada, 1997).

18. *Satisfying Justice*, *supra* note 6.

19. For example, dissatisfaction is evident with respect to (i) the high rates of incarceration with little or no deterrence or rehabilitation evident; (ii) a perception shared by offenders, victims and the community that the criminal justice system is unfair and unjust; (iii) (iv) the budgetary reality of burgeoning costs; and (iv) an increased interest in alternative models of dispute resolution particularly for aboriginal people and youth. Indeed, there are numerous calls for reform from divergent interests - some of those interests are wanting to see a tougher law and order agenda — others are calling for a more humane and alternative to the present system which has less reliance on the state. Proponents of restorative justice fall into the latter camp.

20. For example, proponents of restorative justice point to the evaluations of one model, victim - offender mediation or reconciliation programs, as demonstrating excellent results in terms of both victims' and offenders' perceptions of the fairness of the mediation process and in relation to the successful performance of restitution agreements by offenders. See generally: Mark Umbreit, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (New York: Criminal Justice Press, 1994) esp. pp. 19-21 and Martin Wright and Burt Galaway (eds) *Mediation and Criminal Justice: Victims, Offenders and Community* (London: Sage Publications, 1989).

21. While it is true that restorative justice is most often described as a "framework", the New Zealand Discussion Paper on Restorative Justice points out that it is not necessarily a complete one. While proponents note historical/cultural precedents for restorative justice - for example, circle sentencing as practised by some First Nations' communities, it is a relatively recent phenomenon in Western systems of criminal justice. As such, "it cannot, as yet, be considered a tested model or theory of justice." New Zealand Discussion Paper, *supra* note 6 at pp. 8 of 14.

22. The B.C. government is not alone in its interest in the expansion of diversion/alternative measures and the adoption of a restorative approach. Both the New Brunswick and Saskatchewan governments are pursuing initiatives in this area. See: John T. Nilson, Q.C., Minister of Justice and Attorney General for Saskatchewan "New approaches needed in criminal justice system" Canadian Speeches, volume 10-05 (September, 1996).

23. See News Release dated November 13, 1996 "Major Reform of B.C.'s Justice System Under Way". It would be instructive to acquire a list of the various participants who have been working with the AG in determining this vision - particularly the contact persons for the "community groups" and "victim's advocates".

24. This initial focus on non-violent, less serious offenders was confirmed in Meetings with Ministry staff.

25. Notes for Opening Address by Attorney General Dosanjh to the Diversion Workshop held February 11, 1997.
26. The expansion of diversion as a matter of provincial policy was publicly acknowledged as early as October of 1997.
27. It should be noted that the Board of BCASVCP had some input here.
28. See generally: *Satisfying Justice*, *supra* note 6.
29. Motion to this effect passed at January BCASVACP Board Meeting.
30. See Diversion Workshop Opening Address Notes, *supra* note 25.
31. See: Helen Reeves, "The Victim Support Perspective" in *Mediation and Criminal Justice*, *supra* note 14 at pp. 44-55.
32. One indication of the problem notes that some of the funding proposals contained references to "cooperative and uncooperative victims. Reeves, *ibid.* at p. 48
33. Reeves, *ibid.*, at pp. 52-53.
34. The Balanced and Restorative Justice Project, p.8
35. Allison Morris, Gabrielle M. Maxwell and Jeremy P. Robertson "Giving Victims a Voice: A New Zealand Experiment" (1993) 32 (4) *The Howard Journal of Criminal Justice* at 309.
36. Correspondence from Patricia Ratel, MAG, April 22, 1998.
37. Correspondence from Patricia Ratel, MAG April 22, 1998.
38. Victim Services Division (VSD) has made a commitment to address the compliance problems. Specifically, VSD has (i) funded community co-ordination committees to assist in identifying dysfunction in policy implementation; (ii) developed, and is in the process of implementing a training program; and (iii) monitored police data for compliance rates - 1993 (56%) and 1995 (75%); and developed an evaluation and are conducting review in Victoria with plans to duplicate in other communities.
39. See newspaper articles: "Court reaffirms conditional sentences" *The Globe & Mail*, Saturday, April 12, 1997, A3 and "Sex assaults on children draw lighter sentences" *The Vancouver Sun*, June 9, 1997, A3
40. See among others: Carbonatto, "Expanding Intervention Options for Spousal Abuse: The Use of Restorative Justice" Occasional Paper in *Criminology New Series: No. 4, Newsletter of the Institute of Criminology* (March 1995) 2,5

41. This position is attributed to Caronnato in Stephen Hooper and Ruth Busch, "Domestic Violence and Restorative Justice Initiatives: The Risks of a New Panacea" (1996)4 #1 *Waikaito Law Review* 101 at 102.

42. See Sandra A. Goundry, Yvonne Peters & Rosalind Currie, *Family Mediation in Canada: Implications for Women's Equality* (Ottawa: Status of Women Canada, March 1998) in press at this time.

43. Kim Pate, Executive Director of the Association of Elizabeth Fry Societies suggests that these new reform measures being introduced across the country are reminiscent of the de-institutionalization of people with mental health problems - an initiative that was viewed as progressive at the time. However that initiative did not live up to its promise because it was not accompanied by the necessary resources to ensure that community supports existed for these people.

44. The second part of that question might be: "And for whom?".

45. *Satisfying Justice*, *supra* note 6 at 102

46. See for example: Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* Ottawa: Supply and Services Canada, 1996; E.N. Hughes, Q.C. (chair), *Gender Equality in the Justice System*, Vols I & II The Law Society of British Columbia 1992 esp. chs. 7 & 8; Report of the Commission on Systemic Racism in the Ontario Criminal Justice System Queen's Printer for Ontario 1995 (Margaret Gittens & David Cole - Co-Chairs); Commission of Inquiry into Certain Events at the Prison for Women in Kingston (Honourable Louise Arbour, chair) esp. pp. 218-223.

47. Ruth Morris, "Not Enough!" (Book Review) (1995)12 #3 *Mediation Quarterly* at p. 291.

48. Letter dated April 22, 1997, to Andrejs Berzins (Senior Crown Prosecutor) from Kim Pate, Executive Director of CAEFS - Canadian Association of Elizabeth Fry Societies.

Appendices A&B

(SEE ALT 1.1)

Examples of Case Types

Category 1	Category 2	Category 3	Category 4
<ul style="list-style-type: none"> - first and second degree murder - attempted murder - manslaughter - sexual assault with a weapon, or threats to third parties, or causing bodily harm or aggravated sexual assault - sexual offences involving breach of trust and/or children - robbery - aggravated assault - criminal harassment - arson with disregard for human life - break and enter or unlawfully in a dwelling house involving injury or attempted violence - hostage taking — extortion - criminal negligence - impaired driving or dangerous driving causing death or bodily harm - use of explosives which are likely to cause bodily harm or death - sabotage - using a firearm in the commission of an offence - kidnapping - unlawful confinement - prison breach - escape lawful custody (involving violence) - living on the avails of prostitution, procuring etc. - obtaining or attempting to obtain sexual services of children (S. 212(4)) - counterfeiting - bribery - obstructing justice - perjury - mischief causing danger to life - pornography offences (possession or making) involving children - hate/propaganda offences. 	<ul style="list-style-type: none"> - abduction (Parental) - impaired driving and driving while over .08 - dangerous driving and driving while disqualified - impaired driving or dangerous driving involving a high speed chase - spouse assault and violence against women in relationships (except for aggravated assaults noted in Category 1) - assaulting a peace officer - arson (except those arson offences noted in Category 1) - break and enter of a dwelling house - carry a concealed weapon - possession of a prohibited weapon - possession of a weapon for a purpose dangerous to the public peace - possession of a restricted weapon - careless use, storage or pointing a firearm - escaping lawful custody (non-violent) - uttering threats to cause death or body harm - possession of an explosive substance - possession of forged currency and passports - public mischief - criminal contempt - indecent act (targeting children) - failures to appear and unlawfully at large - sexual assault (other than those sexual offences noted in Category 1) - theft, possession of stolen property, forgery, fraud, false pretences, uttering, unlawful use of a credit care, unauthorized use of a computer, (involving public funds, public documents, internal theft, a scheme of organized criminal activity, a position of trust or a vulnerable victim) - hate bias offences - assault causing bodily harm - assault with a weapon - child abuse (except as noted in Category 1) - breach of probation or recognizance 	<ul style="list-style-type: none"> - break and enter other than a dwelling house - theft over \$5,000 (except as noted in category 2) - possession of stolen property over \$5,000 (except as noted in Category 2) - forgery, fraud, false pretences, uttering, unlawful use of a credit card, in amounts over \$5,000 (except as noted in Category 2) - unauthorized use of a computer (except as noted in Category 2) - assault - s. 266(except VAWIR) - mischief over \$5,000 - indecent act (except for offences targeting children as noted in Category 2) - possession of house/car breaking instruments - take auto without consent - trespass at night - communication for the purposes of prostitution (exception: demonstrated nuisance in the community, in which case the matter should be dealt with as a category 2 offence) 	<ul style="list-style-type: none"> - theft under \$5,000 (except as noted in Category 2) - possession of stolen property under \$5,000 (except as noted in Category 2) - false pretences, uttering, unlawful use of a credit card, where the amounts involved are under \$5,000 (except as noted in Category 2) - causing a disturbance - mischief under \$5,000

Appendix B

List Of Interviewees And Individuals Who Provided Feedback On First Draft of RJ Paper

Alison McPhail
ADM Community Justice Branch
Ministry of Attorney General

Susan Christie
Community Justice Branch
Ministry of Attorney General

Susanne Dahlin
Director, Victim Services Branch
Ministry of Attorney General

Carrie Craig,
Coordinator
Coquitlam RCMP Victim Assistance Program

Regula Baer,
Coordinator, Victim Support Services
Family Services of Greater Vancouver

Tracy Porteous
Coordinating Consultant
BC Association of Specialized Victim Assistance and Counselling Programs

Susanne Wheeler
Abbotsford Matsqui Indo-Canadian Specialized Victim Assistance Program

Harjit Kaur
Women Against Violence Against Women Rape Crisis Centre
Vancouver

JoAnne McCabbe Merritt
Victim Services, RCMP E Division Headquarters
Vancouver

Etta Connor
Independent

Jane MillerAshton
Manager, Restorative Justice and Dispute Resolution Unit
Correctional Services Canada

Willie Blonde
John Howard Society of BC

Debby Hamilton,
South Peace Community Resources
Specialized Victim Services

Morgen Baldwin
Prince George and District Elizabeth Fry Society
Specialized Victim Assistance Program

Deborah Pedersen
STV Counsellor
Central Okanagan Elizabeth Fry Society

Jackie Milsom
Powell River Specialized Victim Support Services

Marje Riches
Specialized Victim Assistance Program
Maple Ridge/Pitt Meadows Community Services Council

Cynthia Davis
Integrated Program
SAC SVAP
Kamloops Sexual Assault Counselling Centre

Fran Leclair
Specialized Victim Assistance Program
Trail Family and Individual Resource Centre

Jane Coombe
Policy Analyst Victim Services Division
Community Justice Branch
Ministry of the Attorney General

Sharon Card
Senior Policy Analyst
Ministry of Women's Equality

Sheryl Jackson
Stopping the Violence Branch
Ministry of Women's Equality

Lee Lakeman

Rape Relief

Kim Pate
Executive Director
Association of Elizabeth Fry Societies

**LIST OF INDIVIDUALS WHO PARTICIPATED IN RJ DISCUSSION SESSION ON 23
OCTOBER 1997**

Tracy Porteous
BCASVACP

Pam Simpson
100 Mile House & District Women's Centre

Don Wright
BC Society for Male Survivors of Sexual Abuse

Greta Smith
BC/Yukon Society of Transition Houses

Jarmila Hradil
VAWIR Coordinator
Aimee Beaulieu Transition Houses

Teri Bannister
OPTIONS Services to Communities Society

Deborah Pedersen
Central Okanagan Elizabeth Fry

Kelly Smith and Sandra Howell
Chetwynd Women's Resource Society

Cathy Welch and Stephanie Reifferscheid
Cowichan WAVAW

Marion Dubick,
Downtown Eastside Women's Centre

Yvonne VanAmerangen
VISAC

Lynn Mace
Fernie Women's Resource & Drop-In Centre

Ken MacIntyre,
Keskwen scotxe Health Services

Vivian Kelly

Houston Health Centre

Larry Pearson
John Howard Society

Cynthia Davis
Kamloops Sexual Assault Counselling Centre

Jody Beesley
Kamloops Sexual Assault Counselling Centre

Sheila Smith
Kamloops Sexual Assault Counselling Centre

Laurie Parker Stuart
Kate Booth House

Geraldine F.
Kate Booth House

Karen Walker Lavery
KSAN House Society

Colleen Roome
KSAN House Society

Marje Riches
Maple Ridge/Pitt Meadows Community Services

Sara Williams
Nicola Valley Community Services

Donna Stevenson
North Island Crisis and Counselling Centre

Janet Carmichael
North Island Survivors Healing Society

Laurel Batterham
North Peace Community Resources Society

Carol Seychuk
Northern Society for Domestic Peace

Kathy Koziol
OPTIONS

Gina Jarvis
Pacific Center Family Services

Louise Hara
Port Coquitlam Area Women's Center Society

Lorraine Sernagiotto,
Port Coquitlam Area Women's Center Society

Jackie Milsom,
Powell River Community Services Association

Guadalupe Burgos
Powell River and Region Transition House Society

Morgen Baldwin
Prince George and District E. Fry Society

Judith Kerr
Queen Charlotte Islands Women's Society

Leslie Kaehn
Quesnel Women's Resource Center

Jill Moreton
South Okanagan Victim Assistance Society

Christina McLennan
South Peace Specialized Victim Services

Debby Hamilton
South Peace Specialized Victim Services

Laura Cahoon
Surrey Women's Centre

Carol Sabo
Terrace Women's Resource Center

Carol Ross
The Advocacy Centre

Fran Leclair
Trail Family Individual Resource Centre

Bonnie Bailey
Tumbler Ridge Family Support Society

Ferda Bayazit
Vancouver Island Haven Society

Anne Spilker
Vancouver Island Haven Society

Cyndy Sturdy
Vernon and District Women's Center

Nythalah Baker
Vernon Women's Transition House Society

Heidi Smith
Vernon Women's Transition House Society

Jack Keough
Wells Grey Community Resources Society

Jarmila Hradil
West Kootenay Women's Association

Kam Raj
Vancouver WAVAW

Harjit Kaur
Vancouver WAVAW

Bobbie Howatt
Women's Resource Society of the Fraser Valley

**LIST OF INDIVIDUALS WHO PARTICIPATED IN RJ DISCUSSION
CONFERENCE CALL ON 27 OCTOBER 1997**

Tracy Porteous
BCASVACP

Sandra Cacchioni
Trail Family and Individual Resources Society

Judy Clark
Nanaimo Police Based Victim Services

Geri Hunter
RCMP Victim Services, Creston

Nancy Drewitt
Vancouver Custody & Access

Leslie Kenny
Comox Valley Transition Society

Kay Medland
Trail Victim Assistance Program

Sharon Herd and Louise Underhill
Phoenix Transition Society

Kathy Koziel
Virginia Sam TH

Marie McGarrigl
Parksville RCMP Victim Services

Marline Halisheff
Police Victim Services, Victoria

Loretta Parkinson
Victim Witness Assistance

**LIST OF INDIVIDUALS WHO REVIEWED SECOND DRAFT RJ PAPER,
MARCH/APRIL 1998**

Tracy Porteous
BCASVACP

Jane Coombe
Ministry of Attorney General

Marlene Halisheff,
Police Victim Services, Victoria

Greta Smith
BC/Yukon Society of Transition Houses

Marje Riches
Maple Ridge Pitt Meadows Community Services

Leslie Kaehn
Quesnel Women's Resource Centre

Cynthia Davis
Kamloops Sexual Assault and Counselling Centre

Wendy Walsh
Spousal Assault Victim Support, Victoria

Elaine Norton
Spousal Assault Victim Support, Victoria

Kay Medland
Trail RCMP Victim Services