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Justice as Healing

A Newsletter on Aboriginal Concepts of Justice

Developing a Restorative Justice Programme
Part Two

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Editors Note: *The following is part two of two articles on "Developing a Restorative Justice Program" and is being published in consecutive newsletters for ease of reference. Mr. Peterson and the Law Courts Education Society of British Columbia developed the following guide material to introduce communities to Restorative Justice programs. The excerpts are reprinted with the author's permission*

Circle Sentencing

Court judgements have set out the process for sentencing circles in their jurisdictions. For example, in *R.* v. *Moses*[29], in the Yukon Territory, Judge Stuart spent a good part of the judgement explaining the structure of the circle. In summary, it looked something like this:

- The sentencing circle was held in court. Seating was arranged in a circle for the number of people participating (30).
- The defence sat beside the accused, crown sat across the circle from them, next to the judge. Others found a "comfortable" place.
- Everyone introduced themselves, one at a time, around the circle. the practice of showing deference to the judge by standing when speaking was foregone.
- The judge, and counsel made opening remarks. Then a discussion ensued among the participants, in no particular order. • The courtroom remained open to the public. (Judge Stuart noted that in unusual instances, that too might be foregone.)
- The circle was transcribed by the Court Reporter.
- The offender was able to address the judge after the discussions, but before the judge made a final determination.
- Counsel still advocated their respective interests, but did so in a way that was fundamentally different from a usual sentence hearing.

In Saskatchewan, the process is largely similar, except the circle is generally opened by a prayer, if so chosen; the defence and crown agree at the circle on the facts of the dispute; and speaking was always one-at-a-time, and in order, starting from the first person who chose to speak, going around the circle, until finally a proposal was agreed upon.[30] The end of sentencing circle discussion is typically declared by the circle, and *not* the judge.[31]

In *R.* v. *Joseyounen*[32] criteria for sentencing circle were set out, and have been largely accepted and restated by other courts and higher courts. The criteria include:

- Accused must voluntarily agree to have the recommendations as part of the judge's consideration
- Victim is willing to participate.
- Disputed facts have been resolved. Judge Stuart of the Yukon Territorial Court has also commented on criteria in the Yukon, which include:
- The offender has accepted responsibility for his or her actions.

- There has been a guilty plea.

[Presumably, a finding of guilt at the end of a trial would disqualify a candidate.]

- There is community support for the offender.
- The victim has had meaningful input.

In *R.* v. *Alaku*, the court declared two mandatory criterion for commencing any sentencing circle:

- The accused has shown a sincere intention to be rehabilitated, and to participate meaningfully in that rehabilitation, and
- The community wants to be involved in the process on behalf of the accused.[33]

The participants of sentencing circles have also been reviewed. There is common agreement about who a circle should (or even must) include in addition to the accused, victim, judge and counsel:

- Elders or other respected member's of the community.
- Members of the accused's family and extended family or immediate community.
- Members who support the victim.
- Police.
- Experts with experience dealing with the accused.[34]

There are other commonly accepted facets of sentencing circles with respect to process. Perhaps first and foremost is the *equality* of the members within the circle. No one has a voice more dominant or more influential than any other.[35] Second, it is worth reiterating that the sentencing decisions are made *by the circle*, that is, the elements that comprise the sentence of the offender are the choices of the circle and not the judge. The judge *approves* the recommendation, but he or she does not *devise* the recommendation. Finally, not all sentencing circles are held in a courtroom. Depending upon the facilities available, a circle may be held in a community centre, or a lodge.

Judge Stuart has also remarked that pre-sentence work will be vital to the success of any sentencing circle.[36] Interviews with the victim and offender, confirmation of availability of rehabilitative services, and commitments by supervising Elders or other individuals are essential in order to encourage confidence in the proposal by the judge and the crown.

A note regarding sentencing circles for young offenders. As has already been stated, the importance of carefully devised handling of young offender cases is critical to the success of youths in breaking from a cycle of crime. The BC government is explicit in it's policy manual[37] that the government encourages the use of alternative measures at both the diversion and the sentencing stages. At s.69 of the YOA, the establishment of "Youth Justice Committees" allows for committees (for our purposes, as part of larger RJ initiatives) to speak to the court at *any stage of the proceedings*.[38] This should be seen as encouraging to communities, for it indicates that provincial and federal governments are taking steps to accommodate approaches to the administration of justice that are different from theirs historically.

Post-incarceration reintegration support

The Saskatchewan Court of Appeal has observed that sentencing recommendations from RJ programmes and other community groups are "futile" when the offence has a minimum mandatory sentence of 2 years or more, because under the *Criminal Code* those sentences must be served in a federal penitentiary and the sentence cannot have any conditions attached after the offender has served his sentence.[39] However, there seems to be no bar at law to an RJ body speaking to the court, on behalf of the accused, with regard to sentence length, since only the minimum has been stated, and not the *maximum*. An offender who pleads guilty and takes responsibility for his actions need not be unrepresented by his community RJ programme.

In addition to requesting leave of the Court to speak to sentence length, an RJ programme may work later with offenders (and their counsel) to discuss healing programmes during incarceration (with the responsible corrections branch), and upon release.

The emphasis placed on rehabilitation and reintegration suggests that this stage of the cycle of an offence becomes vital to the healing process. An offender who comes out of a custodial sentence may not have been provided with any post-release programme from the responsible corrections agency.[40] Postrelease planning typically involves counselling, and reintegrative and rehabilitative *healing circles* to bring a past offender back into the community.

It is important to distinguish between sentencing circles and healing circles. The former are, as discussed, designed to allow equal contribution by all connected to an offence to the sentencing stage. The perspective of each participant is, in part, from where the quality of her contribution derives. But in a healing circle, the focus is on the reintegrative and rehabilitative phases of the restorative process.[41] The sentence is being served (or has been completed), but the *healing* may not have even started yet.

A healing circle may focus on the victim, or the offender. Healing circles are part and parcel of the umbrella idea of Victim-Offender Reconciliation Programmes (VORP). To take but one example, the process for the Fraser Region Community Justice initiatives was briefly outlined in a report to the AG of BC on RJ models.[42] The basic structure follows this pattern:

1. Victim referrals come from a variety of sources: the victim, victim services personnel, or an offender's representative.
2. Programme staff conduct extensive "file reviews and interviews with each party" to determine genuine desire to participate, suitability, and support. Counselling or therapy are often undertaken as part of the healing path.
3. At first, contributions and messages to each other are delivered by letter, audio or videotape. Sometimes face-to-face meetings come out of the process. Through it all, intensive support structures are in place for the victim and family.
4. Among the goals are a reduction or elimination of fear and anxiety regarding the release and reintegration of the offender.

These programmes can occur at any stage of the offence cycle. Most commonly, they are started at the sentencing phase (where the offender is serving a custodial sentence or a sentence in the community). Due to factors such as resources or geography, the VORP may not be able to be fully initiated until after release. VORPs are just one of many RJ programmes that are used during a sentence. Others include: healing or sweat lodges on prison or penitentiary property, counselling programmes delivered inside the facility, education or employment programmes also delivered inside and post-release, and life skills training. As well, therapy programmes are increasingly being recognized as crucial in the reintegrative and rehabilitative phase of an offender's cycle. They include anger management, and drug and/or alcohol programmes.

Part 3 will discuss more about these programmes, but a note here is in order: the kinds of programmes discussed in this section have significant resource requirements. Mediators, counsellors and therapists must be trained and/or certified and recognized by the province.[43] As well, instructional materials for the programmes will have to be written and printed; a private and controlled location will be needed where participants can feel safe, comfortable and reasonably private. Where there is no ability to provide these essentials, neighbouring communities that have these programmes may levy fees, or may have wait lists of some length. For programmes while the offender is incarcerated, staff may have to travel to the facility to deliver programmes. They will need to be cleared by Corrections staff,[44] as would their materials. These challenges are among the most demanding in the process of establishing a community restorative justice programme. And they will not work perfectly the first time they are tried. Revisions, variations, additions and deletions to programmes are inevitable, and take a toll on resources as well.

There is no argument that incarceration and post-release planning are essential to the health of not only an offender, but to the community to which he goes.[45] Legislation governing federal penitentiaries

explicitly provides that "aboriginal spirituality and spiritual leaders and elders have the same status as other religions", and that "all reasonable steps" will be taken to provide for the services of aboriginal spiritual providers.[46] Many facilities, both provincial and federal, have programmes in place now. A community RJ programme may be as discrete at this stage as advising on and arranging for participation in those established programmes. Other more complex or unique programmes will require more planning and resources.

Conclusion – Delivery Methods

One of the most meaningful ways to choose which delivery method or methods would be the most effective in *achieving the community's goals* is to refer to the traditional methods of dispute resolution, as discussed in Part 1. If the community in non-Aboriginal, consider first how the community feels it can *contribute* to the administration of justice. Then, research the pragmatics of the operation of each model. *How* does the community want to use the model? The process of each can be quite complex, time consuming, and require a number of staff. The guiding principle in deciding which delivery model to use must always be *the resolution of an identifiable problem*. This is the *"purpose"* of the programme, and will be discussed in more detail in Part 3.

Measuring Community Support

By now workshop participants have a good understanding of (1) what were the traditional dispute resolution practices for their people, and (2) how contemporary models of restorative justice have taken shape, and how those models fit with those traditional practices. Now participants need to ask some final questions about "next steps":

1. *In light of the current profile of RJ programmes in British Columbia, how does the community wish to proceed?*

As indicated, community support for RJ initiatives has been identified as a critical element in judicial and crown support for community recommendations. In Part 1 participants reviewed traditional ways of dispute resolution and conflict settlement. Historical research will develop and inform the points from those discussions. Then, the community in general needs to be consulted in some manner that allows for a *recording* of the support level. This might involve community meetings, surveys, or other participatory schemes to gauge community acceptance of the proposal.

2. *Is there unity in the views of the community about what an RJ programme is to accomplish for the community?*

A characteristic of community support is agreement on the foundations. There may be support in the community for taking control of justice as much as they can, but, members may be divided about what offenders they are willing to address, the volume of resources they are willing to invest, or how the community will react to those who do not fulfil their commitments arrived at under programme participation.

Resources

Resources are more than just money; they are personal donations of time, they are counted in buildings, building use, and in community determination. Resources are also measured in leadership.

Are there already individuals or organizations that are willing to assume key leadership roles in a restorative justice programme?

Leadership can come from established organizations such as Councils or other community leaders. They may need to be created anew- a Tribal Council, or a Restorative Justice Steering Committee of some type that will oversee the administration of various initiatives. This will serve the community well, as steering committees provide a consistent sources of decisions, records management, accountability, and contacts for communications with the justice system.

Are there individuals trained in the delivery of various programmes, or, do they need to be hired and/or trained?

As mentioned earlier, mediators, counsellors, therapists must all be trained in the delivery of their various services. That training will require tuition or other fees, travel, and even prerequisites to acceptance into courses. Taking on a new position, and investing time, training, and personal expense will weigh heavily on candidates- either favourably or otherwise. While the YOA requires that Youth Justice Committee members be unpaid,[47] other staff may need to be remunerated, and travel expenses may need to be reimbursed. The community may have interested and dedicated people eager to contribute to the project, but, qualifications will be required for many of the staff of an RJ programme.

What is the source of funding?

Resources are very much about money, too. Money for salaries, supplies, travel, insurance, materials and a plethora of other things; money that has to be recorded and accounted for. Spending may have to be reported to outside agencies, and substantiated. This too will require a qualified money management staffer. As will be discussed in Part 3, pilot project funding may be available from the government, but it may not be enough itself, or, it may run out, leaving the community to secure other sources of continued funding. Funding stability should be considered seriously in the planning stages of the project.

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29 (1992) 11 C.R. (4th) 357, [1992] 3 C.N.L.R. 116 (Y.T. Terr Ct.)

30 I had the opportunity to participate in a staged mock circle sentencing at the College of Law at the University of Saskatchewan, under Professor N. Zlotkin and a judge of the provincial court experienced in circle sentencing.

31 See M. Leonardy, *First Nations Criminal Jurisdiction in Canada*, 1998, Native Law Centre, University of Saskatchewan, at p.279

32 *Supra*, note 5

33 *R.* v. *Alaku*, (1992) 112 D.L.R. (4th) 732 (Que. Ct.)

34 The list is a compilation from *R.* v. *Morin*, *supra*, note 5, *R.* v. *Joseyounen*, *supra*, note 5.

35 Judge Stuart, in an article in *The Accord* (June 1995), included in *Promising Models in Restorative Justice: A report for the Ministry of Attorney General of B.C.*, by Dave Gustafson and Sandi Bergen, from the Fraser Region Community Justice Initiatives Association, 1998.

36 *Ibid*.

37 *Supra*, note 13.

38 Again, there is mention of the "designation" of committees, and that the government may "specify" the "function" of such committees. However, this need not be seen as an unreasonable restriction of the process of such committees, but instead as merely an indication that the government wishes to participate in the process as a partner with the committee.

39 *R.* v. *Morin, supra*, note 4, at pp.134-5 (C.C.C.)

40 The *Aboriginal Justice Inquiry*, (Vol 1, p.469), and the Royal Commission on Aboriginal Peoples (RCAP) , *Bridging the Cultural Divide*, (p.126) and among many, many others have cited the lack of post-release planning as a serious obstacle to successful reintegration.

41 Judge Stuart makes this point well in his article in *The Accord* (June 1995), *supra,* note 35.

42 See note 8, the report by Gustafson and Bergen, at pp.58-62.

43 Such institutions as the Justice Institute of BC, or universities and colleges likely provide the academic and practical skills training needed to meet provincial requirements.

44 See, for example, *Corrections in Canada; Policy and Practice*, by John W. Ekstead and Curt W. Griffiths (1994, 2nd ed., Harcourt Brace) for an introduction to corrections management. Corrections Canada also has a website on the internet.

45 Again, see the RCAP publication *Bridging the Cultural Divide*, at p 126-147; the AJI (Vol 1, p.469); Ekstead and Griffiths, *ibid., Corrections in Canada*, at pp.330-335 (numerous studies are listed from the 1960s and 1970s that were express and clear in their support of a need to reform the prison system, including making the best use of an offender's time through programme development and post-release planning.

46 *Corrections and Conditional Release Act*, S.C. 1992, s.83

47 s.69.

Part 3: Developing an RJ Programme Plan

Introduction

Thus far, participants have been urged to reflect on the motivation for considering an RJ programme. To continue, next the community will need to consider what problem or problems it seeks to resolve, and what advantage the community can bring to the resolution process. That is, again, why start a restorative justice programme? What is it about the community that makes the citizens feel they can positively affect the conflict situations in their midst? In Parts 1 and 2, the community reviewed traditional methods of dispute resolution and how those methods may have differed with the current retributive system. Participants were also introduced to various programmes that have infused the justice system with the principles of 'restorative' or 'transformative' justice. Finally, a community needs to consider, in light of the character of their community, how to best implement their initiatives; to combine and compile these various considerations into a cohesive plan. To do that effectively, some areas previously explored need to be revisited and expanded upon.

Purpose & Targets

During Part 2, participants were asked to consider what types of transgressors would be referred into the programme. That determination is part of a broader concern— what is the very *goal* of the programme? It is essential that participants determine their approach to justice (Part 1) and consider what methodologies would fit best with their traditional practices (Part 2), but as the programme becomes clearer, the decisions that need to be made actually become broader. Now they must consider what local, specific problems a programme would seek to correct. That is, in setting up this programme, what are they hoping to accomplish? This is what will be referred to as the *purpose* of the programme. The purpose is the community's *reason for taking on a participative function inside the justice system*. That purpose could be fundamental— a step toward self determination, or, it could be as specific as a measure toward to reduction in the number of incarcerated young offenders from the community.

A community will establish the purpose of an RJ programme by first looking inward and taking stock of how they *define* their community: what makes them a 'community'[1], what problem(s) in the context of the justice system does the community suffer from, what is the source of the problem and can it be addressed through an RJ programme? By making a profile of the community (demographics, geography, etc.) the community can learn what problems affect them, and they can *search for what, if any, internal contributing factors exist*. Maybe they will find that the community will benefit from a restorative approach to crime because much of that crime has causative roots in contemporary or historical sociopolitical or economic factors that are best known and understood by the community itself. Offending, in other words, may only be *symptomatic* of other concurrent or preexisting problems. Or, equally possible, they may discover through this review that the community is uncertain that characteristics of concern are causal or correlative. Through research, a community may find that while many aspects clearly make citizens part of a defined 'community,' others are not so unifying. This exploration is important in part to establishing the purpose of the programme.

The other element of the purpose is the *goal* of the programme. As discussed in both Parts 1 and 2, the community needs to define clearly what it hopes to achieve. The examples above were *general* (a step toward self determination) or *specific* (reduce incarcerated young offenders from the community). This should be a results-oriented purpose. Arguably, no lasting value to the community will result in operating an RJ programme if that participation has no purpose or goal— no intended beneficial result or outcome. The programme must be able to set out a *reason for being* that can be evaluated and displayed to the community as a whole. There must be a reason to support it.

A concomitant concern is the *target* client of the programme. The target client group refers to the disputes the programme will take on. More specifically, it refers to whom the RJ will take on as a client and where it will speak in the justice system. The diagram below sets out how the purpose (the overall concern of the programme) and the targets are to be viewed:

[Diagram omitted]

The target clients should be dictated first by the will of the community, within limits resulting from the current law and other influences such as funding. The very purpose of bringing an RJ programme into being will inform the choice of who it will and will not accept. If a community wants to reduce the number of young people going to detention facilities through a *Young Offenders Act* diversion programme, then it would be best to limit the scope of the programme to that end, at least in the beginning. This is how purpose and target are connected.

The Support of the Community & the System

- *The Community*

Finally, when an RJ programme's fundamentals are established, the group that has initiated the creation of it needs to present it to the community. It is important that this be done only *after* the previous steps have been followed and the *framework* has been established. The less the group has to say, "I don't know that yet," the better. A clearly derived plan with a settled purpose and known target groups is the best plan to present to the broader people of the community. Support from the community is essential to the success of restorative justice programmes (hence their other incarnation, "community justice"). While it is true that the participants must freely volunteer to participate in any programme to which they are referred[2], it is equally true that community support is elemental since a core principle of restorative justice is the reparation of rifts and disharmony among the parties *of and within the community itself, who are also seen as party to the victimization*.[3] Community support must be gauged through any number of data collection methods:

- Community survey—an information kit and questionnaire sent to all citizens
- Community "town hall" meetings— a presentation is given, information is distributed, and a question & answer session is conducted
- Targeted meetings with organized groups — representatives from demographic or other groups are met with and the programme is discussed according to the interests of the group.

The steering group should be prepared to answer serious questions about virtually all elements of RJ programmes discussed thus far, and more from the topics in the last portion of Part 3, The Application Process, discussed later. This means that some members of the community may have suggestions, recommendations, compliments or concerns, and those will need to be addressed before the group can expect to receive support from them. How the group gauges support will be up to them. How that support is proven will be determined by any funding agencies who have that support as a prerequisite to funding or recognition.[4]

- *The Stakeholders*

In addition to the members of the community, the group will need to have had serious and involved discussions with the other stakeholders in the justice system. For example, in criminal (as opposed to civil) RJ programmes, the stakeholders include:

- police
- the judiciary
- Crown counsel
- the defence lawyers serving the community
- community support networks
- social services agencies
- parole and probation services
- corrections officials

Support from these individuals is critical:

- It is the police who will accept or reject a programme when deciding whether to divert someone rather than pursuing a charge.
- It is the judge who allows an RJ group to
- speak to bail, or
- provide submissions on sentence or convene a sentencing circle
- approve of a crown/defence application for alternative measures
- It is the Crown who makes diversion decisions at the charge stage, and they will only divert to recognized (or 'authorized,' as demanded by the *Criminal Code* and the *Young Offender's Act*) RJ programmes
- It is the defence bar who advocates for the offender through the various stages, and works with the other actors in the system for the best interests of their client
- Community support and social services agencies work in conjunction with many RJ programmes- they are the ones providing the services RJ groups will recommend.
- Corrections are an oversight ministry, charged with the duty of monitoring offenders fulfilling RJ agreements.

Two final groups are also valuable resources for any group involved in the creation of an RJ programme: one, people who have been through the system themselves, that is, victims and offenders. They can provide keen insights into not only how the current system operates, but, they will provide a glimpse into how offenders and victims in a post-RJ community will view the existence of such an endeavour. The second group that can lend valuable expertise to the group is the various communities already involved in RJ initiatives. The group should speak not only to groups that are similar in character and have an RJ programme, but, to different types of communities as well, and, those who have started but ceased operating RJ programmes.[5] All these groups can save a new programme valuable time, effort, money, and most importantly the pains of failure by handing down the wisdom of experience. As stated earlier, no programme will run perfectly the first year out, but, a successful timeline can be shortened through prudent research into communities already familiar with the pitfalls and essentials of a working programme.

Recognition and/or Funding: Part A

The continuum of an offence is useful to illustrate not only at what points a programme may intervene, but also where government recognition of an RJ programme becomes important.

[Diagram omitted]

In civil cases (two private parties involved in a private matter) and at some stages in criminal cases, an RJ programme relies on acceptance by the stakeholders only. In the civil cases, the parties need to agree to, for example, a mediated settlement. As long as the settlement is not unlawful, the mediation is permitted. In criminal matters, there are three stages at which RJ programmes can operate without government authorization:

- the police responsible for law enforcement in the community may be guided by policies regarding what programmes may be accepted for diversion referrals. The programme steering group, then, needs to gain acceptance by the police (and, of course, any agency that might be responsible for carrying out any portion of the diversion agreement)
- at the sentencing stage, where the RJ group or committee must request leave by the court to be heard in matters of sentencing. The level of submission may be a written report that expresses factors about the offender's character, family, and links to the community which are integrated into a sentence proposal, or, a request to the judge to convene a full sentencing circle.
- reintegrative programmes upon release of an offender do not require any official recognition. Participation at the post-offence stage will rely on the voluntary agreement of the offender, and any

agency that is needed to provide the offender services (such as life-skills training, employment training, or temporary residency.)

However, in criminal matters this changes once a charge recommendation has been made to the Crown attorney. Both the *Criminal Code*[6] and the *Young Offender's Act*[7] require that any alternative measures programme be "authorized" by the Attorney General. In BC, the Crown policy is that the Crown, through the AG, is responsible for maintaining the list of authorized RJ programmes.

There are broadly two ways for a community's programme to gain acceptance: (1) through successful entry into the justice system at the stages discussed above (which will evolve into credibility through experience), and (2) by application to government projects that not only *fund* RJ start-up projects, but also provide for Crown *evaluation for acceptability* into the Crown diversion catalogue. Following the next, brief section, the final portion of this Part will review briefly who and how communities contact agencies that fund programmes and provide for approval into the Crown diversion stage of the justice system …

Recognition and/or Funding: Part B

To review, what has been accomplished thus far?

1. Participants have *reviewed traditional methods* of conflict resolution and dispute settlement, and have reflected up the differences between how the current system operates, and *how they want to participate* in the delivery of justice to those in their community.
2. Participants have been introduced to the continuum of an offence, and *where a programme may intervene*. They have been shown the various models of RJ, the constituent elements of those models, and the *basic mandatory requirements of an RJ programme*.
3. Participants have been asked to reflect on the *purpose* and *target groups* they intend to address, and the overarching *goals of an RJ programme*. Also, the importance of *community support*, and meaningful *consultation with stakeholders* has been stressed.

There are two reasons for such a thorough exploration during the planning stage: (1) careful planning, reliable research and a clear expression of purpose and goals is essential to the success of any undertaking of this size and this importance[13]; and (2) should a community seek funding and recognition by the Crown under either the AJS or the CAP initiatives, these groups will be asking for this information as part of the application process.

The Application Process

Should a community seek funding to implement an RJ proposal, either under the non-Aboriginal *Community Accountability Program* (CAP) or the *Aboriginal Justice Strategy* (AJS), the program's decision making bodies will be looking for thorough, well thought-out proposals that detail for them answers to requests for very specific information.

What the Community Receives –

The CAP, for example, provides up to a maximum $5,000 on a one-time only grant for communities to set-up diversion programs at the pre-charge stage, as well as Victim-Offender Mediation programmes, Family Group Conferencestyle models.[14] The AJS, however, has no pre-set funding limit, and the formula for funding is much more flexible with respect to time (it may not be a one-time only grant).[15] The application for funding from the CAP is a one-page submission, however, the brevity of this form should in no way be seen as therefore *simple* or *less serious* than that of the AJS. The manual sets out detailed expectations that at some points rivals that of the more complex AJS process.

Expectations

Both the AJS and the CAP decision making bodies play a significant role in the development of programme proposals seeking approval. With the AJS, the Directorate is contributing serious and substantial benefits to a programme:

- *Funding* Money is provided to assist communities in implementing their plans. But the AJS is accountable to those who provide *them* the money to allocate to successful communities. That means not only that a proposal must illustrate potential merit and benefits to people, but, that the programme's steering committee has in place an accountability structure to track and record the efficient and wise use of those funds.
- *Recognition* Recognition translates into credibility in the legal community with respect to gaining access to the Crown roster of "authorized" alternative measures programmes under the *Code* and the *YOA*. As well, the public may take an interest in the programme, perhaps to scrutinize it for successes and ways in which the system might further benefit from other such programmes.

The AJS is actually an Memorandum of Understanding (MOU) between the BC government and the federal government.[16] This means that the funding comes from public revenues, and that the governments are accountable to other ministries (for example, the Treasury Board at the federal level) and to the public as well. The AJS sees itself as having three functions that must work together:

1. Work with and assist communities seeking to participate meaningfully and effectively in the justice system for the benefit of their communities;
2. Administer money effectively for both the public and the applicant community; and
3. Ensure, as the government responsible for criminal justice administration under the *Constitution* of Canada, that public safety and the just application of the law is provided for.

The result is an application process that will be complex and detailed. However, the AJS wants a partnership with the applicant community, and in that spirit will work with the community from the very beginning. They will talk with steering committee leaders about the proposal and help them understand the process so the community does not waste resources on proposals that do not meet the needs of the AJS. This workshop will become an instrumental part of that preapplication process.[17] Steering groups that have taken this workshop will be in an advantageous position when dealing with the AJS or the CAP. By participating here, they will have learned and explored nearly every major preliminary issue the funding agencies will want covered *beforehand*. The group will have many answers already, and in most cases will be aware of the expectations of the agency when they begin the process. A well informed group will be in a better position to understand the requirements of the AJS or CAP, and will therefore be ready to provide the information they want and reduce the application time period. This means a programme that is up and running in a shorter time.

… This has been only a *review of constituent elements of RJ programmes in BC*. Despite that limitation, however, hopefully participants understand the process ahead of them, and feel better prepared to undertake a proposal, and more confident in dealing with funding agencies and other stakeholders.

Conclusion

The individuality of communities should be apparent as it relates to the formulation of an RJ programme. Groups wanting to start such a project face great rewards and many challenges. The most homogenous community can differ about the delivery of an RJ project, even if there is universal approval for the underlying principles. Some communities may have members who will not support the project. RJ programmes, like any other public policy project, can fall prey to conflict and misuse.[18] It also has the capacity to take advantage of a process set into place by law, and encouraged by government. RJ has the capacity to unite a community, improve relations among citizens, and deal better with conflict than simply pure reliance on the current justice system.

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1 Professor Rick Linden and Don Clairmont stress the value of a community documenting a profile of the community. See *Making it Work: Planning and Evaluating Community Corrections and Healing projects in Aboriginal Communities*, (1998, Fed Dept of Justice) at pp.27-29.

2 This cannot be stressed too much. Not only do alternative measures not work for anyone forced into them, but, those measures also lose credibility and the support of the community if they are not seen to be contributing to a reduction in crime incidents in the community.

3 This point is stressed by Ruth Rogers, AG of BC, in a conversation with the author.

4 To be discussed in the next section.

5 The importance of avoiding painful and costly pitfalls is stressed by both the Linden and Clairmont report, *supra*, note 47, as well as the Aboriginal Justice Directorate, and the Nova Scotia Department of Justice.

6 Section 717.

7 Sections 4 and 69, and to some extent, s.3.

8 They may also share almost identical purposes when, for example, a closed community with a homogenous religious culture chooses to start an RJ project, such as the Mennonites in the 1970s. In this example, however, the Aboriginal and Mennonite community will share more common characteristics than not. This is rarely the case in other, urban communities with diverse cultural, religious and ethnic memberships.

9 From Peterson, M., *Legal Plurality in the Domestic Setting*, *supra*, Part 1.

10 See, for example, *Understanding Restorative Justice in BC*, (AG of BC, August, 1999) at p.3; *Restorative Justice: A Vision of Healing and Change*, (Susan Sharpe, for the Edmonton Victim Offender Mediation Society, 1998) at p.17. Other references to these motivations are made throughout these works.

11 Such as *R.* v. *Gladue* (1997), 119 C.C.C. (3d) 481 (S.C.C.).

12 Such as those of Judge B. Stuart of the N.W.T., as well as many in Saskatchewan, Manitoba and BC.

13 While all stakeholders recognize this, Linden and Clairmont, *supra*, note 47, set out well the reason, and some ways for a community to do this.

14 See the CAP Manual, p.4, and Part Two, pp.9-14. While the CAP does not specifically exclude Crown diversion (often more serious charges), the language of the Manual indicates a strong preference that community programmes target less serious offences and non-violent offences.

15 See the AJS application, at p.5.

16 Which ends in March, 2001, but will likely be renewed, although in what form it is not yet known.

17 This workshop has received wide support from both the federal and provincial representatives in the AJS, and the director of the CAP.

18 Linden and Clairmont remind us of the importance in close communities of keeping interventions from high ranking officials or other influential members away from the parties, as well as pressure to participate (or not) from groups or individuals with vested interests and other agendas. This is also a concern of the author, and the BC government.