

# **Comparative Justice Reform: What Are the Lessons for British Columbia?**

**by**

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## **Abstract**

Canada and British Columbia have been gaining international recognition as innovators in the practice of restorative justice since the early 1970's. Notwithstanding, only a modest amount of research and development in the praxis of restorative justice in British Columbia has been conducted since this time. Research and development has occurred elsewhere, and this paper explores the developments of restorative processes in Nova Scotia and England and Wales. Through a comparative analysis, this paper explores lessons learnt for British Columbia, where justice reform is currently being considered by the Ministry of Justice. Justice reform characterized by community engagement, commitment to praxis and evidence, and developing restorative justice programs that are accountable and transparent emerge as important lessons learnt for British Columbia. Each of these areas are discussed and a set a recommendations encompassing these key elements put forward.

**Keywords:** Restorative justice; praxis; research and development; justice reform; community justice; accountability and transparency

## **Dedication**

I dedicate this paper to the hardworking men and women, past, present and future, who work tirelessly and passionately to further the restorative justice movement.

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# Table of Contents

Approval.....	ii
Partial Copyright Licence.....	iii
Abstract.....	iv
Dedication.....	v
Acknowledgements.....	vi
Table of Contents.....	viii
<b>1. Introduction.....</b>	<b>1</b>
1.1. Overview.....	1
<b>2. Restorative Justice Development in Canada.....</b>	<b>7</b>
2.1. What is restorative justice?.....	7
2.2. Restorative justice in Canada: National context.....	14
2.2.1. Brief History.....	15
2.3. Criminal Code and United Nations Developments.....	22
2.4. Research and Development and Evaluation.....	25
2.5 Community, accountability and restorative justice in Canada.....	27
<b>3. The Restorative Justice Development in England and Wales.....</b>	<b>31</b>
3.1. 2010 Green Paper: “Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders”.....	31
3.2. Brief history of restorative justice in England and Wales.....	33
3.3. Current Developments.....	37
<b>4. Restorative justice development in Nova Scotia.....</b>	<b>43</b>
4.1. Brief history of restorative justice in Nova Scotia.....	43
4.2. NSRJP: Beginning to present.....	45
<b>5. Restorative justice development in British Columbia.....</b>	<b>55</b>
5.1. Brief history of restorative justice in British Columbia.....	55
5.2. Current restorative justice developments in British Columbia.....	58
<b>6. Recommendations and Conclusions.....</b>	<b>61</b>
6.1. Recommendations for the future of restorative justice developments in British Columbia.....	61
6.2. Conclusion.....	79
<b>References.....</b>	<b>86</b>



# 1. Introduction

*The growth in the range, diversity and geographical spread of restorative justice initiatives in recent years has been remarkable. Even more remarkable is the extent to which restorative justice thinking appears to be increasingly influencing the direction of criminal justice policy-making at almost every level: international, governmental, and also sub-governmental within a wide range of criminal justice agencies, including the police, probation service and prison service. As its influence develops, however, one inevitable consequence will be to expose ever more starkly a number of significant 'fault-lines' within the restorative justice 'movement', necessitating some fundamental reappraisals of hitherto taken-for-granted assumptions, and some difficult policy choices regarding the future direction of restorative justice endeavours (Dignan, 2002, p. 168).*

## 1.1. Overview

In the 1970's and 1980's Canada was leading the way, with regards to advancing and integrating restorative justice processes within the justice system. From the creation of victim offender reconciliation programs (VORP) to the report *Taking Responsibility* written in 1988 for the Canadian House of Commons, and various other initiatives (discussed in more detail in Chapter 2); Canada was the home of many notable scholars and practitioners, who successfully developed and implemented a diverse range of restorative justice processes. Canadian scholar Susan Sharpe's (1998, p. 19) touchstones of restorative justice have had an influence on the way restorative justice processes are conceptualized and utilized throughout the world. These touchstones are:

1. Invite full participation and consensus;
2. Heal what has been broken;
3. Seek full and direct accountability;
4. Reunite what has been divided; and
5. Strengthen the community, to prevent further harms.

While Canada was on the cutting edge of restorative justice initiatives in the early years of development, Canada never carried through with the praxis necessary to move forward. Conversely, fueled by rigorous research and policy development, England and Wales has more fully engaged in the development of restorative justice processes. Within Canada, Nova Scotia is the province engaging in rigorous praxis. These developments will be discussed in this paper as two comparative case studies for British Columbia.

Currently in England and Wales, restorative justice initiatives are encouraged and supported through significant research and development at the levels of government, community NGOs and university research. For example, at the government level in 2010 a Green Paper, *Breaking the Cycle: Effective Punishment Rehabilitation and Sentencing of Offenders*, called for considerable changes in the way justice is delivered for victims, offenders and the community along with advancements in the implementation, development and continuation of restorative justice processes. At the community level Independent Academic Research Studies (IARS) was launched in 2001 by Dr. Theo Gavrielides. The overall mission of IARS is to create a safer society through “producing evidence-based solutions to current social problems, sharing best practice, and by supporting young people and the community to shape decision-making” (IARS, 2012). This ground-breaking international think-tank has multiple projects, including several restorative justice-based ventures. IARS is a community based and community led organization that encourages community engagement and development. While IARS does not receive funding from the government, the founding director, Dr. Gavrielides serves on many government initiatives and steering committees, such as the steering group that developed the national strategy for implementing restorative justice at every step of the justice system. England also partners with universities such as Oxford and Cambridge, which are at the cutting edge of research on the benefits of restorative justice. For example, the strongest empirical evidence on restorative justice was published in England: *Restorative Justice: The Evidence* by Sherman and Strang (2007); that was created to:

...bring together the results of RJ trials in order to set out a definitive statement of what constitutes good quality RJ, as well as to draw

conclusions both as to its effectiveness with particular reference to reoffending and as to the role that RJ might play in the future of Britain's youth and criminal justice systems (p. 3).

This is just one example of the significant research conducted in England on restorative justice processes.

Within Canada, Nova Scotia is making considerable strides in their efforts to develop restorative justice throughout the province. These developments are led by the Nova Scotia Restorative Justice Program (NSRJ or NSRJP) which was created in 1999. This program has agencies working in nine different communities throughout Nova Scotia (NSRJ-CURA, 2012). Presently, the NSRJ is partnered with the Community University Research Alliance (CURA). NSRJ-CURA "is a collaborative research partnership between university and community partners" (NSRJ-CURA, 2012). Funders for this partnership come from the university and community partners, and currently, a million dollar grant spread over five years from the Social Sciences and Humanities Research Council of Canada (NSRJ-CURA, 2012), making it the largest research and development project for restorative justice in Canada.

The two comparison cases, England and Wales and Nova Scotia, were chosen based on the availability of relevant research and development conducted on restorative justice. In particular, England and Wales has been carrying out similar justice reform developments to British Columbia (e.g. 2010 Green Paper). These comparisons are important and beneficial however, it is not a matter of simply transferring the systems and programs from the comparison cases and inserting them in British Columbia. As the National Restorative Justice Week theme highlights, it is important to recognize diverse needs and unique responses. In other words, restorative justice is not a one size fits all model and must address the specific needs of diverse communities and contexts.

British Columbia has a rich history of community-led restorative justice programs. Community Justice Initiatives (CJI), a prominent restorative justice program in the province, received its first referral in May 1982 (Morrison & Pawlychka, 2012, p. 363) and has been at the cutting edge of Victim Offender Mediation nationally and internationally since this time. Further developments in British Columbia occurred in

1997 and 1998, after the Attorney General expressed interest in furthering restorative justice initiatives for its potential to involve communities in the justice process (Morrison & Pawlychka, 2012, p. 368). To this end, three documents were produced and distributed including *Strategic Reforms of British Columbia's Justice System* (April 1997), *Restorative Justice Framework* (January 1998), and *Community Accountability Programs Information Package* (1998, 2004). Despite this flurry of enthusiasm, restorative justice programs were, and currently remain, largely under developed and under funded by the province (Cowper, 2012, p. 134). A key concern in British Columbia involves the lack of support for research, despite willingness from various community groups (Morrison & Pawlychka, 2012, p. 369). Currently, the provincial government has announced the need for justice reform and the expansion and increased support of restorative justice through a Green Paper and the review of the Green Paper (Ministry of Justice, 2012; Cowper, 2012).

The future for restorative justice developments in British Columbia have recently been reviewed through the release of a Green Paper by the Minister of Justice and Attorney General entitled *Modernizing British Columbia's Justice System* (February 2012). The Final Report by Geoffrey Cowper, *A Criminal Justice System for the 21<sup>st</sup> Century* (August 2012) makes a number of recommendations for the use of restorative justice. The Green Paper (Ministry of Justice, 2012) highlighted the following overall mandate (p. 8):

Striking the right balance – being clear regarding the spirit and letter of independence, while acknowledging that we administer one system and are ultimately accountable to citizens to make best use of the available resources – is the key challenge for our system and the underlying theme of this Green Paper.

The Green Paper was created to look at the increasing paradox regarding decreased crime rates in British Columbia with increasing wait times for individuals awaiting trial and bail along with increased expenditures on the system (Ministry of Justice, 2012, p. 11-14).

Geoffrey Cowper (2012) was tasked to write a response to the Green Paper making his recommendations for justice reform in British Columbia. The recommendations for restorative justice initiatives in the province include:

1. A province-wide plan for diversion, including restorative justice, should be developed to include education, quality assurance and control, performance measures, reporting and evaluation (p. 93);
2. The Criminal Justice and Public Safety Plan for the Province should include a performance goal for increased use of restorative justice programs (p. 151); and
3. Expanded funding for restorative justice programs should be made available and innovative methods of funding should be assessed, such as funding referrals, in cases where the offender would otherwise be subject to a significant criminal penalty (p. 151).

Cowper (2012) also placed an overall emphasis for crime reform in British Columbia on:

1. Collecting data, research, education, training and evaluation for restorative justice;
2. Accountability and transparency to the general public;
3. Offender rehabilitation and reintegration;
4. Engaging victims in the justice process; and
5. Community safety, restoration, protection and engagement.

Cowper's recommendations and themes are a first step in the direction of Sharpe's (1998) touchstones of restorative justice; that is, inviting full participation and consensus; healing what has been broken; seeking full and direct accountability; reuniting what has been divided; and strengthening the community, to prevent further harms. To this end, three core themes emerge for British Columbia through the comparative perspective carried out in this paper. First, the distinctive contribution of community to the justice system must be fully acknowledged and operationalized. Second, systemic and comprehensive research and development must be prioritized and supported through partnerships with universities, community based NGOs, and government. Third, accountability and transparency of the justice system in general, and restorative justice processes in particular, must be prioritized and supported.

British Columbia is in a ready position to embrace "*A Criminal Justice System for the 21<sup>st</sup> Century*". The findings of this paper fully support the recommendations for the implementation and development of restorative justice put forward in the review.

## Paper Organization

Chapter 2 discusses restorative justice in more detail, including a short history of restorative justice in Canada. Chapter 3 highlights the past and current developments of restorative justice in England and Wales. Chapter 4 describes the history and present expansion and endeavors of the Nova Scotia Restorative Justice Program in Nova Scotia. Chapter 5 illustrates the development of restorative justice and the current justice reform initiatives in British Columbia. Finally, Chapter 6 illustrates the future of justice reform, with regards to the advancement of restorative justice in British Columbia, along with recommendations for this process.

## **2. Restorative Justice Development in Canada**

*Canada has the opportunity, and the capacity, to learn from this international experiment in restorative justice to which it has so proudly contributed. Moreover, Canada has the capacity to renew the promise of restorative justice as a domestic import. The lesson learned is that we must engage in praxis locally, provincially, nationally, and internationally. We must import as much as we export, and develop the sustainable capacity of “off ramps to community (Morrison & Pawlychka, 2012, p. 374).*

### **2.1. What is restorative justice?**

Advocates and academics studying restorative justice have yet to come up with one definition of restorative justice. It is widely agreed that it does not involve the traditional courtroom and lawyer scenario (Llewellyn & Howse, 1998, p. 1). In practice “There is no single institutional model for restorative justice. As a result it is not possible to offer a blueprint of a restorative process against which to judge models calling themselves restorative. Each restorative justice process may be fundamentally different in design and still be entirely restorative in nature” (Llewellyn & Howse, 1998, p. 42). This ambiguity has led to numerous challenges in theory and practice. “Therefore, it is essential to agree upon the meanings associated with restorative justice fundamentals, but in a way that does not stifle its flexibility and potential to apply to a variety of situations” (Doolin, 2007, p. 437). Numerous scholars and advocates have also weighed in on their definitions of restorative justice. Johnstone and Van Ness (2007) review of the literature illustrates that restorative justice has been conceptualized in three ways: encounter; reparative; and transformative (p. 1). The encounter conception captures the core concept of restorative justice which is the idea that the victim, the offender and other stakeholders should meet and discuss the harm, outside the traditional court setting (Johnstone & Van Ness, 2007, p. 9). Proponents of this concept believe a number of benefits are derived from this process including: deterrence; rehabilitation; a

reduction in the victim's fear; aiding victims in understanding why the offender committed the act; allowing the victim to be a part of the decision making process; and offering the victim an avenue for receiving restitution (Johnstone & Van Ness, 2007, p. 10). Howard Zehr (2008) references the encounter process between the victim, offender and the community as one of the core processes of restorative justice (p. 7). The reparative conception rejects the way offenders are currently being handled in the traditional criminal justice and instead promote the reparation of harm and relationships crime has devastated (Johnstone & Van Ness, 2007, p. 12). Zehr's book *Changing Lenses* (1990) focuses on this shift from a "retributive" focus on crime, which lets down victims and largely fails to hold offenders accountable, to a "restorative" focus that is based on the needs of everyone affected by the crime to build relationships to deter future crime. Finally, the transformation conception finds the core challenge at a deeper level and the way we classify crime should be re-evaluated. Individuals should think about the way they view themselves and their interactions with others (Johnstone & Van Ness, 2007, 15). To this end, Elizabeth Elliott (2011) offers the following idea: "...I learned that the problems were much deeper than a flawed criminal justice system, and that our work needed to begin in our relationships with each other and the natural world, and most importantly, with ourselves" (p.xii). Specific definitions vary on their focal point, with conceptual overlap in the three distinctions offered by Johnstone & Van Ness (2007) For example Gavrielides' (2007, p. 23-24) definition offers conceptual overlap:

RJ sees 'crime' as a conflict not between the individual and the State, but between individuals. Accordingly, this understanding encourages the victim and the offender to see one another as persons. In consequence, the focus of the process is on the restoration of human bonds and the reunion of the two individuals and of the individual with the community.

As does Sharpe's (1998) definition: "restorative justice is an orientation, not a type of program. It is a set of values and beliefs about what justice means, which in turn point to principles for responding to criminal harms" (p. 19).

Restorative justice is a justice that puts its energy into the future, not into what is past. It focuses on what needs to be healed, what needs to be repaired, what needs to be learned in the wake of a crime. It looks at what needs to be strengthened if such things are not to happen again (Sharpe, 1998, p. 7).



A shared theme throughout definitions is that restorative justice is a participatory process that engages victims, offenders and the community in a respectful way to promote healing and accountability for all parties involved.

Sharpe (1998) offers five touchstones to operationalize the process: 1. Invite full participation and consensus; 2. Heal what has been broken; 3. Seek full and direct accountability; 4. Reunite what has been divided; and 5. Strengthen the community, to prevent further harms (p. 19). These touchstones provide a broad contextual framework for this paper.

### *Invite Full Participation and Consensus*

In the current criminal justice system the crime is against the state, not the direct victim(s) (Sharpe, 1998, p. 3). Hence, the victim loses their right to be fully heard, ask questions and tell their side of the story. Further, the mainstream system is operated and controlled by professionals. Restorative justice allows the community to play an active role in holding offenders responsible, supporting victims and providing opportunities for offenders to make amends (Cormier, 2002, p. 2). Restorative justice recognizes that justice is only truly accomplished when everyone touched by the crime can start to move past the harm; in other words, “Justice cannot truly be served without the contribution of those who are touched by a criminal act” (Sharpe, 1998, p. 8). Once the offence and the harms created have been addressed, healing can begin (Sharpe, 1998, p. 9). Full participation also includes restoring social support as a key objective of restorative justice (Braithwaite, 1996). He emphasized inviting friends and family as sources of encouragement and support during a restorative process whenever possible. Through including community members, full participation during restorative processes also provides understanding and perspective for the wider community. Likewise, “Where participation in RJ processes affords citizens greater understanding of specific issues that affect them either directly or indirectly, it also affords them the ability to communicate their views on community standards” (Elliott, 2011, p. 203). Finally, inviting full participation encourages a responsive democratic community that are willing to take responsibility for actions committed within the community (Walgrave, 2001). Ensuring full participation in justice processes enhances community engagement and

increases direct accountability to those most harmed by the offense which will support and promote healing.

### *Heal what has been Broken*

To heal what is broken, a meeting with all affected parties affords this possibility. Roche, (2003, p. 2) found that restorative encounters have the potential to bring out some of the greatest human qualities, including the ability to express sincere regret and settle disputes, identify with others, and encourage forgiveness. Many victims have various questions about the offence that only the offender can answer. During the restorative justice process, victims can ask these questions in a safe place where the offenders are willing to answer their questions in a respectful manner. This often helps the victim understand why they were selected, and how/if they can avoid a similar situation. "In a restorative process, offenders face the people they have hurt and hear the damage their action has caused. They are expected to explain their behavior and their motivation, to help the victim and the community make sense of it" (Sharpe, 1998, p. 10). By bringing everyone together to discuss the harm in a respectful manner, equality is reached and offenders can be effectively reintegrated back into the community as contributing members (Sharpe, 1998, p. 7). The restorative process serves to repair the harm caused by the offence. Each group benefits from this reparation. Victims have the opportunity to feel heard and heal throughout the restorative justice process; community benefits by having a voice and lending support to the other parties; finally, offenders benefit through the possibility of reintegration back into a supportive community that has been given the chance to heal (Zernova, 2007, p. 40). Braithwaite (1996) further emphasizes this point by stating "restorative justice means restoring victims, a more victim-centred criminal justice system, as well as restoring offenders and community". Howard Zehr (2002) also describes the restorative justice process as a process that, at the very least, involves the victims, offenders and community, and addresses the harms and needs of the victim while holding the offender accountable for the crime committed (p. 25). Finally, restoring harmony and healing participants, also involves ensuring balance is restored and maintained (Braithwaite, 1996, p. 16-17):

There is no virtue in restoring the balance by having a woman pay for a loaf of bread she has stolen from a rich man to feed her children. Restoring harmony between victim and offender is only likely to be possible in such a context on the basis of a discussion of why the children are hungry and what should be done about the underlying injustice of their hunger.

A sincere effort from all parties, particularly the offender, not only aids the healing process, but also builds trust that was also shattered after the offense was committed. This trust will assist the reintegration of the offender and subsequently the re-building of the harmed community.

### *Seek Full and Direct Accountability*

Accountability is an important value of the restorative justice process. Zehr (1990) emphasises genuine accountability in order to ensure a truly effective restorative process. “Genuine accountability, then, includes an opportunity to understand the human consequences of one’s acts, to face up to what one has done and to whom one has done it” (Zehr, 1990, p. 42). This accountability, accepting of responsibility and healing of the offender, the victim, and other stakeholders, is unique to the restorative justice process and not typically found in the traditional criminal justice system. The traditional criminal justice system is set up to be adversarial where the major decisions are made by professionals and the victims and offenders are expected to remain passive (Johnstone, 2003, p. 2). Nils Christie (1977) explains that the conflicts become the lawyer’s property because in the traditional adversarial system, lawyers steal the conflict from the offenders and the victims (p. 4). Sharpe (1998) warns that crime already creates an “us-them” mentality; which the traditional justice system further replicates by leaving the key players out of the justice process (p. 10). Restorative processes bring everyone together, which aids in reintegration for both the victim and the offender back into their community. This process supports community building, which is an imperative aspect of preventing subsequent harms.

Two types of accountability that restorative processes can generate are interpersonal and state accountability. Interpersonal accountability is achieved when offenders, victims and the community work together to support one another and hold each other accountable for their actions. “As victims, offenders and other participants

attempt to reach consensual decisions, they have to provide each other with reasons, claims, and explanations for their demands and decisions” (Roche, 2003, p. 22). State accountability involves holding criminal justice professionals accountable to their actions and decisions. For example, Roche (2003) explains police officers can be held accountable for their actions by addressing complaints and concerns about police conduct (p. 133). “Just as restorative justice meetings endeavour to get through to offenders by bringing them face-to-face with the consequences of their deeds, so they may also get through to state officials (Roche, 2003, p. 135). Accountability provides valuable transparency to the general public, which is important for creating public confidence in the restorative process.

#### *Reunite what has been divided*

Restorative justice processes assist all parties by providing justice and reintegration. “Restorative justice helps to knit those halves back together. Its goal is to reintegrate ‘us’ with ‘them’ into a larger whole” (Sharpe, 1998, p. 10). This is accomplished through empowering victims by giving them a voice, allowing them to ask questions, share how the offence has affected them, along with having a say in the outcome of the process. Offenders take responsibility for their actions and agree to answer questions and are able to share their story. Also, restorative justice advocates encourage everyone who is affected by the offence, such as victim and offender supporters and the community, to take part in the process. Finally, reintegration of the offender back into the community is encouraged and facilitated through the process. Restorative justice processes aids with this reintegration process by encouraging respectful treatment of offenders; which ultimately improves a communities’ safety (Sharpe, 1998, p. 17-18). Restorative justice “transforms the offender’s passive responsibility in the face of punishment into an active responsibility with a view to reparation” (Walgrave, 2008, p. 194).

Restorative justice based programs also give courts the option to turn to communities when deciding what is best for a case, which allows the communities a voice and an increased opportunity to participate in the justice process (Sharpe, 1998, p. 6). Communities become divided through crime. Engaging and healing the community

are key objectives in the restorative process. Restorative processes include the community as a participant, diagnosing what causes in the community led to the crime which in turn benefits the victim and offender by restoring community relationships and improving the chances of rehabilitation and reintegration of the offender back into the community (Zernova, 2007, p. 40). The practice of RJ empowers individuals and communities through building healthy relationships, where fellow citizens support each other while holding each other accountable for their behaviour (Morrison, 2006, p. 373). Including everyone affected by the crime builds relationships of participants and strengthens community which often leads to a reduction in the chances of criminal behavior (Morris, 2002, p. 612).

#### *Strengthen the Community, to Prevent Further Harms*

Elliott (2011) defines community as “a multi-dimensional concept that includes relational, affective, political, creative and collective aspects. They are the micro-societies in which we feel some level of engagement outside of our homes” (p. 196). Restorative justice processes strengthen communities through the incorporation of the four previous touchstones, encouraging full participation; healing; promoting accountability; and building relationships through reuniting victims and offenders with their community. Community members are encouraged to actively participate in the restorative justice process, which is not valued in the current criminal justice system (Sharpe, 1998, p. i). The restorative justice process, unlike the current criminal justice system, is a holistic approach in that it works with every party to provide a satisfying outcome. Victims are given a voice; offenders must accept responsibility and are asked to be accountable for the harm they have caused (Sharpe, 1998, p. 1). “Justice in every community can be inclusive, healing, and a widely shared responsibility. In fact, justice *should be* those things, given what this culture claims to be important” (Sharpe, 1998, p. 12). Restorative justice processes can help community members regain awareness of goings-on in their own community. When communities are given the chance to participate in the justice process they hear first hand from the offenders how and for what reason crimes were committed. This allows community members to more accurately diagnose and remedy the problems in their community (Sharpe, 1998, p. 4).

“The potential for restorative justice to engage community members in meaningful decision-making about their own matters also affords opportunities to *build* community. People who have real, as opposed to perfunctory, involvement in decision-making will have more investment in the results” (Elliott, 2011, p. 197). From this perspective, justice is reciprocal. In asking offenders to be more responsible in the community, it asks the community to be more responsible in how it treats offenders. In asking offenders to show remorse and offer atonement, it asks victims and communities to be present to an offender’s apology and receive the reparation given. In asking offenders to live in better relation to their neighbours, it asks those neighbours to live in closer relation to their offenders (Sharpe, 1998, p. 13). “A system of justice that increases understanding and empathy, enhances people’s sense of responsibility to each other, and strengthens a sense of community is almost certain to counteract crime more effectively than one that brands people as bad, handles them coercively, and repeatedly fuels their anger” (Sharpe, 1998, p. 14). Community is an imperative component of the justice process that is largely missing from the current criminal justice system in Canada. Engaging community has many benefits including increasing direct accountability of offenders to victims and community members, and accountability of community to the victims and offenders through aiding in the healing process, building relationships and reintegration of the offender back into the community.

Evidently, the importance of supporting and engaging community and ensuring accountability of justice to these communities are central themes in each of Sharpe’s touchstones. In each definition of restorative justice, inclusion of everyone affected by the crime process is emphasized. For restorative processes to deliver a justice that heals each participant, communities need to be an integral component throughout the process.

## **2.2. Restorative justice in Canada: National context**

*It is somewhat ironic that as a champion of human rights and one of the first countries to formally introduce RJ into its youth justice system, Canada has not fully capitalized on this opportunity to shift from traditional social control*

*mechanisms to social engagement as a means of dealing with youth crime* (Winterdyk & Jones, 2012, p. 233).

Restorative justice is not a new phenomenon despite being widely unknown amongst the general public (Pawlychka, 2010). The justice system we have in place today is comparably recent, yet for generations it is the justice system we have all become familiar with; hence it is often referred to as the traditional justice system. The values and principles of restorative justice have been around for centuries (Llewellyn & Howe, 1998, p. 5). Restorative justice was the leading form of justice for much of our human history for possibly everyone until the end of the Dark ages (Braithwaite, 2002, p. 5). The contemporary conception and application of restorative justice has very humble beginnings in a small rural Canadian town in 1974 (Zehr, 2008, p. 2). In the 1980's Canada became a world leader, as multiple restorative programs extended rapidly throughout the country, with the Canadian government supporting and promoting the research and development of restorative justice, particularly through the report *Taking Responsibility* (1998) issued by the House of Commons. In Canada, restorative justice processes have been implemented from police diversion to post-sentence (Latimer, Dowden and Muise, 2001, as cited in Cormier, 2002, p. 2). Also in 1996, "Canada became the first country in the world to include restorative justice, through the provision of reparations to victims and communities, as a legitimate option within the Criminal Code (see Section 718.2 (e))" (Morrison & Pawlychka, 2012, p. 359). However, since this landmark achievement restorative justice developments have not flourished, with the government failing to deliver and support for research and development.

### **2.2.1. Brief History**

Three main restorative justice processes emerged in the Canadian context: victim offender reconciliation programs, sentencing circles, and community conferences.

#### *Victim Offender Reconciliation Program (VORP)*

The roots of the Mennonite expression of restorative justice in Canada stem back to 1974. The development of VORP is considered the first shift toward more restorative processes (see Zehr 1990; 2002). The impendence for VORP arose from a series of

property offences, committed by two youth in a small town in Ontario. A probation officer suggested the youth voluntarily meet with their victims to hear how their actions had affected them; assess the damage and ascertain the right restitution and apologize to their victims (Morrison & Pawlychka, 2012, p. 362). Hence, VORP brings together victims and offenders in a face-to-face meeting where each party can open up and articulate their feelings and tell their story and work together to achieve restitution for the harms caused to each party (Sharpe, 1998, p. 25). Victim-offender reconciliation seeks to (Community Justice Initiatives Association, 2012):

1. Identify crime that can be successfully dealt with in the community;
2. Effect reconciliation and understanding between victims and offenders;
3. Facilitate the reaching of agreements between victims and offenders regarding restitution;
4. Assist offenders in directing payment of their 'debt to society' to their victims; and
5. Involve community members in work with problems that normally lead into the criminal justice process.

VORP as a restorative process doesn't directly invite community members into the encounter between the offender and the victim. However, VORP aids the community in various ways. VORP benefits the community by (Community Justice Initiatives, 2012 Association):

1. Providing community members with an opportunity to develop skills which empower them to resolve present and future conflicts;
2. Giving community members opportunities to practice their conflict resolution and mediation skills as mediators in criminal and other community conflicts;
3. Offering a cost-effective means of resolving conflicts within the community; and
4. Increasing the likelihood of deterrence from further irresponsibility through having offenders take direct, face-to-face responsibility for their actions.

This initial ground-breaking case incited the idea and creation of restorative justice programs throughout Canada, including Community Justice Initiatives (CJI) in Langley, British Columbia. CJI is a non-profit, community based organization that provides restorative processes to victims and offenders involved in severe violence” (Gustafson, 2005, p. 194). Their mission is “To foster peacemaking and the resolution of conflict in



the community through the development and application of Restorative Justice values, principles and processes” (Community Justice Initiatives Association, 2012). The program seeks to heal all parties harmed by the crime which will create safer, more stable communities.

The traditional definition of community does not fit the restorative processes of CJI as participants directly involved in the mediation process are a trained mediator and the victim and offender. However, community can be defined and operationalized in various ways. Michael Bopp and Judie Bopp (2001) define community as “any grouping of human beings who enter into a sustained relationship with each other for the purpose of improving themselves and the world within which they live” (p. 13, as cited in Elliott, 2011, p. 192). This idea is further emphasized and demonstrated by Braithwaite (1996) when he states “in the alienated urban context where community is not spontaneously emergent in a satisfactory way, a criminal justice system aimed at restoration can construct a community of care around a specific offender or a specific victim who is in trouble (p. 24).” These definitions of community encapsulate the relationship between the victim and offender during the mediation process at CJI, as “This program focuses mainly on dyadic relationships, primarily those between the harmed and the harm-doers” (Chatterjee & Elliott, 2003, p. 349). CJI, while no longer running VORP; the principles of this restorative process are still essential to the core tenants and training the program provides (Community Justice Initiatives Association, 2012).

While Canada failed to pursue research and development the United States took the principles of VORP and began conducting research and development on victim offender mediation (VOM) programs. The VOM process is an encounter between the victim and offender led by a trained facilitator where dialogue is shared between the two parties (Zehr, 2008, p. 2). The research and development of these processes in the United States surpass the Canadian experience with VORP as studies and evaluations continue to be conducted on various programs throughout the country. For example, Mark Umbreit (2000) has conducted multiple studies on the effectiveness of victim-offender mediation programs throughout the United States.

### *Sentencing Circles*

Traditional Aboriginal justice processes have also contributed to the restorative justice experience in Canada (Chatterjee & Elliott, 2003, p. 349; Cormier, 2002, p. 5). Aboriginal peoples living on this continent before Europeans arrived had traditional ways of dealing with harms done within their communities. Typically those traditions reflected two beliefs: that justice meant restoring harmony, and that the responsibility for maintaining harmony was shared community-wide. Those beliefs are clearly visible in this practice of restorative justice (Sharpe, 1998, p. 37). In Canada the first sentencing circle based on Aboriginal justice was convened in 1982 by Judge Barry Stuart during the *R. V. Moses* case (Morrison & Pawlychka, 2012, p. 364). In 1999, during the *R. V. Gladue* case the Supreme Court of Canada supported the use of sentencing circles (Morrison & Pawlychka, 2012, p. 364). “The Gladue case encouraged the use of alternatives to incarceration and, in endeavouring to remedy the dramatic overrepresentation of Aboriginal Canadians in our prisons and penitentiaries, recognized that restorative approaches resonated with traditional Aboriginal ways of dealing with conflict” (Morrison & Pawlychka, 2012, p. 364). This idea was then legislated under Section 718.2 in the Canadian Criminal Code which states that “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders” (Morrison and Pawlychka, 2012, p. 364). An exploratory study on the impact of Section 718.2 on British Columbia experience found that it is only meeting its aim with specific Aboriginal offenders who have not committed a serious crime, has a minor criminal record and is receiving community support. Hence, the study found that overrepresentation of Aboriginal offenders has not decreased in British Columbia in any substantial way (Hundal, 2011, p. 89-90).

Circles assume, first, that part of the responsibility for dealing with crime lies with the larger community, not just the persons and families directly affected by it. Second, the process of dealing with crimes does much more than solve isolated criminal problems. It is also a vehicle for building community (Sharpe, 1998, p. 37). Community involvement is the essential component in Circles, as community members are often aware of the circumstances surrounding the crime and bring a valuable input in sentencing decisions (Chatterjee & Elliott, 2003, p. 349).

“When communities take the lead in resolving and preventing crime, they can be far more effective than the state in producing deep, lasting changes. At the very least, Circles forge partnerships that can both lessen dependence on the state for dealing with crime and increase the self-reliance that constitutes the social capital of communities” (Pranis, Stuart and Wedge, 2003, p. 13-14).

Circles include court officials, treatment professionals, along with the offender, the victim and supporters; with an open invitation for the whole community (Sharpe, 1998, p. 40). Circles offer a way to practice democracy in far fuller measure than we may otherwise have opportunities to do. “They give us a chance to flex our participatory muscles and to develop skills essential to a democracy-deep listening; constructive, assertive communication; and collective problem solving” (Pranis et al, 2003, p. 231). The potential for restorative justice to engage community members in meaningful decision-making about their own matters also affords opportunities to *build* community. People who have real, as opposed to perfunctory, involvement in decision-making will have more investment in the results. Circle processes in particular are well suited to a variety of purposes that directly or indirectly build community. “They can be used for curative purposes, as in responding to harm with a goal toward healing, and in preventative ways, to address larger issues through democratic dialogue” (Pranis, et al, 2003, p. 209 as cited in Elliott, 2011, p. 197). Since Circles allow professionals to participate, a balance of power needs to be achieved. An example of this is professionals providing their first name, allowing the community to see the person, not the position (Pranis, et al, 2003, p. 213). The following description of Circles by Pranis, et al (2003) provides an exceptional portrayal of the delicate intricacies involved in a Circle process.

Circles bring us together to share who we are beyond our appearances. They're places of listening-of hearing what it's like to be someone else. They're also places for being heard-for expressing what's on our minds and hearts and having others receive it deeply. Telling our stories in the safe space of Circles opens windows on each other's lives, giving us moments when we can witness the path another has walked as well as feel what others appreciate our own paths. The life stories shared are naturally transforming. Speakers and listeners are touched and changed; so are their relationships. Circles don't “make” this happen; rather they provide a forum-imbued with a philosophy and format that reflects it-where profound change is highly likely to happen (p. 3).

It is imperative for each individual affected by the harm to be allowed to speak and feel heard. Circles provide a time and place for this process. Similar to VORP, little research and development have been conducted on sentencing circles in Canada. The research and development of these processes has chiefly come from the Australia experience (see Morrison and Pawlychka, 2012, p. 365).

### *Community Conferences*

Canadian police officials have been strong advocates of community conferencing and have been instrumental in promoting its use (Sharpe, 1998, p. 30). Community conferencing (also known as community justice forums) is based on the family group conference developed in New Zealand and brought to Canada in the late 1990's by the Royal Canadian Mounted Police as a diversion approach from court (Morrison & Pawlychka, 2012, p. 367). The practice rapidly gained visibility and support across the country, not only as a policing initiative but also as a community-based practice (Sharpe, 1998, p. 30). While similar conferencing methods employed in England by the Thames Valley Police use police as facilitators, this is generally not the case in Canada (Chatterjee & Elliott, 2003, p. 351-352). In the Canadian context, police officers act as a catalyst by training community members to facilitate conferences and promote the use of conferences, therefore encouraging communities to handle their own problems whenever possible (Chatterjee & Elliott, 2003, p. 352). This encourages community engagement in the justice process, which actively works to reduce future offending. The facilitator ensures that everyone present has opportunities to participate, poses questions to help ensure that key areas are explored, and makes sure that the final agreement addresses relevant needs and is workable (Sharpe, 1998, p. 32 & 35).

The effects of crime touch more than just the direct victim and offender. Therefore, everyone affected by the crime should be invited to be part of resolving the situation. In this view, harms arise from criminal action are the responsibility not only of the offender who took the action, but also of the family and community who let the offender lose their way and fall into criminal behavior. Family and community therefore share responsibility for doing what is possible toward making things right again-that is, for correcting whatever imbalances made it possible for such harms to occur (Sharpe,

1998, p. 39). Community conferences, therefore, include not only the primary victim of a criminal act but also others who were indirectly affected (Sharpe, 1998, p. 32). According to Chatterjee & Elliott (2003), community is operationalized as “the community of impact-the people who have been affected by the offense” (p. 352) McCold and Wachtel (1998) refer to these as microcommunities. McCold and Wachtel (1998) also state that community conferences can “empower the victim and offender with control over the nature of reparation, and empower the personal communities to exercise informal social support and control of the process” (p. 79). Community engagement and support are integral components and contribute greatly to the success of community conferences.

As with VORP and sentencing circles, research and development of conferences has largely taken place outside of Canada. A comprehensive study on restorative justice processes was carried out in the United Kingdom (Sherman and Strang, 2007). Sherman and Strang's (2007) key findings included (p. 8):

1. RJ works differently on different kinds of people with regards to recidivism;
2. RJ seems to reduce crime more effectively with more, rather than less, serious crimes;
3. Victims benefit, on average, from face-to-face RJ conferences and;
4. When tested in a specific area, RJ brought at least twice as many offenders to justice-and up to four times as many.

Based on these findings and evidence gathered they concluded that, there was enough support to advance and develop restorative processes even more in England and Wales (p. 8). Sherman and Strang's (2007) recommendations include creating an institution that will set standards, guide and monitor programmes and continually produce research and development to ensure the best possible practices (p. 88). This level of dedication to research and development is imperative to the advancement of restorative justice processes in England and Wales.

## 2.3. Legislative, Criminal Code and United Nations Developments

There have been numerous legislative developments within Canada, along with significant contributions internationally on policy and legislation within restorative justice. Furthermore, the current human rights framework, the Criminal Code and the Canadian Constitution align with and support the practice of restorative justice (Heartspeak Productions, 2012). Restorative justice processes can hold offenders accountable for the crimes they commit through the acceptance of responsibility of the crime, allow victims a voice throughout the justice process, repair the harm for everyone affected by the crime, including the community and rehabilitate and reintegrate the offender back into the community; hence, restorative justice is the law as the human rights provisions in the Criminal Code intended it to be (Heartspeak Productions, 2012).

### *Taking Responsibility: 1988*

In 1988 the results from a review of conditional release, sentencing and related facets of corrections, conducted by the Solicitor General, were published in a report by the House of Commons (Gavrielides, 2007; Morrison & Pawlychka, 2012; Cormier; 2002). This report titled *Taking Responsibility* emphasized needs of victims and restorative justice and made a specific recommendation to expand the use and evaluation of victim-offender reconciliation programmes (Gavrielides, 2007; Morrison & Pawlychka, 2012; Cormier, 2002).

In particular Recommendation 19 of the report recommended that the federal government, preferably in conjunction with provincial/territorial governments, support the expansion and evaluation throughout Canada of victim-offender reconciliation programs (VORP) at all stages of the criminal justice process that (a) provide substantial support to victims through effective victim services, and (b) encourage a high degree of community participation (Morrison & Pawlychka, 2012, p. 359).

Despite this promising recommendation, Canada failed to turn the page and fully capitalize on the momentum this report put forward with a lack of research and development of restorative processes throughout the country.

### *United Nations Contributions: 2002*

While not a domestic policy development, in 2002 Canada played a leading role in a resolution on restorative justice endorsed by the United Nations; wherein, they adopted the *Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*. This Declaration, acknowledges the “worldwide... (and) significant growth of restorative justice initiatives,” and encourages global use of restorative justice (United Nations Office on Drugs & Crime 2006, p. 99). “The Declaration also provides guidelines for incorporating restorative approaches into criminal justice through various programs, including mediation, conciliation, conferencing, and sentencing circles” (Pawlychka, 2010, p. 2). Another significant contribution by Canada was in 2006, with the *Handbook on Restorative Justice Programmes* being produced for the United Nations Office on Drugs and Crime by authors based in Canada. The Handbook consists of: (United Nations Office on Drugs & Crime, 2006)

...an overview of key considerations in the implementation of participatory responses to crime based on a restorative justice approach. Its focus is on a range of measures and programmes, inspired by restorative justice values, that are flexible in their adaptation to criminal justice systems and that complement them while taking into account varying legal, social and cultural circumstances (p. 1).

These are noteworthy contributions that have aided in the growth of restorative justice programs around the world.

### *YCJA: 2003*

The Youth Criminal Justice Act (YCJA) came into force in 2003, replacing the Young Offenders Act (YOA). The creators of the YCJA intended the Act to decrease incarceration of young people by reserving jail time for only serious offences (Green, 2012, p. 55). The YCJA has 165 sections versus the 70 in the previous YOA (Green, 2012, p. 55). The relevant sections for this paper include the extrajudicial measures. These measures are designed to deal with youth out of the court system if they admit responsibility for their actions (Green, 2012, p. 57). “Accountability is to occur through the imposition of meaningful consequences and measures that will promote the

rehabilitation and reintegration of the youth into society (Barnhorst, 2004, p. 234). One of the key provisions in the YCJA is the strict orders for police officers dealing with an alleged young offender. They must deliberate the following (Green, 2012, p. 58):

1. Taking no further action;
2. Warning the young person; and
3. With the consent of the young person, referring the young person to a program or agency in the community that may assist the young person in ways that help him or her not to commit further offences.

There is also a section that encourages the use of conferences. “Under the community conferencing provisions of this act (in s. 19) a ‘youth justice court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a youth worker may convene or cause to be convened a conference for the purpose of making a decision required to be made under this act” (Green, 2012, p. 71). These conferences may be restorative in nature and allows voices into the justice process that would normally not have been heard (Green, 2012, p. 71). The YCJA has endorsed various restorative measures, however additional work is needed.

Despite these legislative changes in Canada, which have certainly influenced restorative justice initiatives for youth, particularly initiatives within BC, current evidence suggests that these legislative changes alone are not enough. Focusing on youth as “bad apples’ while not providing and supporting initiatives that embrace a truly holistic approach to reform leaves our youth, and our youth justice system, unengaged and vulnerable to criminal or antisocial behaviours (Morrison & Pawlychka, 2012, p.362).

The legislative developments and United Nation contributions, while encouraging, have had only minor effects on the advancement of restorative justice throughout the country. The following section briefly discusses the gaps in research and development that currently exists in Canada. Following this, a potential evaluation design is outlined by research conducted by Latimer, Dowden and Muise (2001) that may aid in satisfying these gaps.



## 2.4. Research and Development and Evaluation

*“Despite the intuitive appeal of restorative justice, it is imperative to fully evaluate the impact of this approach on several important outcomes” (Latimer, Dowden, and Muise, 2005, p. 2).*

Research and evaluation conducted on restorative justice programs in Canada is currently insufficient; further, they serve divergent purposes. The purpose of research is to augment the knowledge and data available, while evaluations serve to improve the practice of restorative justice. According to Morrison & Pawlychka (2012) there has been a small amount of data collection, documenting the existing programs and evaluations of restorative justice in Canada (p. 364). Research, theory and praxis are integral to the development of innovative yet relatively untested procedures, with restorative justice being no exception. These key elements of development have lacked attention in the restorative justice field in Canada. The initial enthusiasm and flurry of activity surrounding restorative justice was not sustained through thoughtful praxis; thus, restorative justice remains marginalized within the justice system. Realistically, restorative justice practices cannot be implemented overnight; there are many steps that need to be taken before the lofty yet feasible goals of restorative justice can be met.

Generally, literature, research and evaluations on restorative justice tend to have a narrow focus (Zernova, 2007, p. 31). The two measures evaluators typically focus on are offender recidivism and participant satisfaction. The measures are then compared to results from the traditional justice system. Evaluators generally find that participant satisfaction rates are higher and recidivism rates are lower than results from the traditional justice system (Cooley, 1999, p. 18-19). While these are important measures; the results don't answer all the fundamental questions needed for a well rounded evaluation of restorative justice.

It is important to note that evidence-based research can have limitations. Boyes-Watson and Pranis (2012) are apprehensive about relying entirely on evidence based practice. They state (2012):

It may be that many in the evidence-based practice movement believe that the moral grounding is implicit in their work but the evidence-based practice movement is not incorporating a values-based discourse in its extensive discussion of best practices. A moral discourse about the criminal justice system and society is an imperative component in determining what practices should be carried out and how these practices should be implemented (p. 3).

Restorative justice processes, as mentioned earlier, are more than just programs used to reduce recidivism and increase participant satisfaction. Values such as healing, accountability, and community strengthening and participation need to be explored and studied and used as the framework for research and evaluation of restorative processes.

The moral question is who we are as a society and what we hold as foundational values guiding how we treat one another. The question, 'Is a practice consistent with those values?' precedes the question of whether the practice is effective at changing behavior. Once we are clear about our moral compass then we can ask, 'What is effective in achieving the vision our values define?' (Pranis, 2004 as cited in Boyes-Watson, 2012, p. 3).

Also, based on a meta-analysis of restorative justice practices in Canada, Latimer, Dowden and Muise (2001) make several suggestions for future evaluation on restorative justice in Canada. These suggestions include (p. 21):

1. More evaluations of restorative justice programs using randomly assigned treatment and control conditions with an examination of RJ participants' *motivation* in order to address the inherent self-selection bias;
2. More specific reporting practices when presenting outcomes (i.e. by age groups, gender, criminal history, offence type);
3. More detailed information on research reports/articles on the processes involved in the programs and program facilitators;
4. The effectiveness of a combination of restorative justice and "appropriate" treatment approaches;
5. The effectiveness of restorative justice for female offenders;
6. Controlled evaluations of circle sentencing models and healing circles;
7. The relationship between restitution and satisfaction; and
8. Follow-up research into the longer term effects for victims.

These suggestions will help build a solid foundation for evaluations of restorative justice programs.

Currently, restorative justice has not been able to move forward with regards to research and development in Canada despite the efforts and good intentions of its advocates.

Restorative justice has a very compelling philosophical basis. It is rooted in fundamental values of respect for human dignity, honesty, openness, responsibility, caring and healing of relationships. Yet, questions regarding whether it works, and how it works, abound. We have barely scratched the surface in the research to date on restorative justice and have just begun to conceptualize the research questions in this field (Cormier, 2002, p. 20).

Canada's current position observes enacted legislation with restorative provisions; however a lack of praxis, the movement of restorative justice from theory to action, is still relatively negligible. While there are some exceptions, the Province of Nova Scotia being one of them (mentioned in Chapter 4), the Canadian situation is lacking in a substantial research base to aid in the advancement of restorative justice. The following section touches briefly upon the importance of community and accountability with regards to restorative justice developments in Canada.

## ***2.5 Community, accountability and restorative justice in Canada***

*Some argue that "local communities are far ahead of policy makers in the movement towards restorative justice, as the emergence of restorative initiatives across Canada has occurred at the community level (Van Helvoirt, 2003, p. 5).*

In Canada's current situation, many Canadians are not ready to consider principles of healing in the context of the justice system. Unlike our current criminal justice system, restorative justice encourages repairing relationships, accountability and community participation. These values are not always an easy sell in our current society. Walgrave (2008) states there exists today a propensity for the general public to avoid their responsibilities as citizens with regards to social institutions and the quality of social life; which is negatively affecting the quality of democracy in our societies (p. 197) However, the advancement of restorative justice has the potential to change these passive, selfish attitudes.

Its proliferation may advance belief in the potential of deliberative and inclusive conflict resolution, and in the capacities of citizens to contribute constructively to decisions in difficult social situations. In addition, restorative practices may themselves advance self-confident, responsible citizens who understand the intrinsic interwovenness of self-interest with common interest. The quality of democracy is dependent on such citizens (Walgrave, 2008, p.196).

As Block (2008) states, our communities are also fragmented and fragile, working as a collection of institutions close in proximity, but not together (p. 2). As Pranis et al (2003) explains this is often because the community has lost their claim on handling their own conflicts. “The state takes over, leaving community in the role of spectator (Pranis et al, 2003, p. 13). Block (2008) advocates for communities where authority is regained and retrieved by citizens.

To create communities where citizens reclaim their power, we need to shift our beliefs about who is in charge and where power resides. We need to invert our thinking about what is cause and what is effect. This is what has the capacity to confront our entitlement and dependency (Block, 2008, p. 65-66).

Creating communities that care and are willing to become involved in the justice process requires effort on many fronts. One in particular is urban planning. In their book *Doing Democracy with Circles: Engaging Communities in Public Planning*, Ball, Caldwell and Pranis (2009) highlight the importance of including community voice into the planning of urban communities, despite the difficulties that could arise (p. 19). Ball et al (2009) reference the 2006 World Planners Congress in Vancouver, British Columbia where planners were encouraged to engage citizens and promote principles such as equality and justice for all, inclusivity, diversity and human dignity, as the trend to include citizens in large scale building processes is increasing (p. 19 & 27). In essence, citizens and communities, need to be more active and responsive in social matters generally, and justice matters specifically which “restores the deliberative control of justice by citizens” (Braithwaite, 1996). Mobilizing citizens will empower communities and promote community engagement; where citizens can resist isolation and gain a sense of belonging (Block, 2008, p. 79). Restorative justice processes aid and support civic responsibility and community building (Elliott, 2011, p. 204-205). “By bringing participatory deliberative democracy back into the centre of the criminal justice system,

restorative justice offers a possible route for restoring not just victims and offenders, but also for restoring citizens' faith in governments perceived to be unresponsive to their concerns" (Roche, 2003, p. 238). Restorative justice processes can supplement and enhance the current criminal justice system in Canada by promoting accountability.

Generally, there is a lack of accountability of the criminal justice system to the Canadian public along with accountability of justice participants to each other. Restorative justice processes can facilitate accountability of the justice system and participants through including voices traditionally left out of the justice equation in Canada, such as victims and communities. Restorative justice processes can provide direct accountability to victims and offenders by allowing them to have a say in the justice process. Roche (2003) encapsulates this idea by stating "Because restorative justice is premised upon deliberations between those affected by a crime...their deliberations reflect the range of affected interests (p. 4)." In other words, restorative justice processes endeavor to ensure direct accountability to each participant.

Offender accountability of the offence is also an integral component of restorative justice processes. As Zehr (1997) states:

If crime is essentially about harm, accountability means being encouraged to understand that harm, to begin to comprehend the consequences of one's behavior. Moreover, it means taking responsibility to make things right insofar as possible, both concretely and symbolically. As our foreparents knew well, wrong creates obligations; taking responsibility for those obligations is the beginning of genuine accountability (p. 69).

Restorative justice processes can hold offenders accountable by making them aware of the harm they have caused and encouraging the offender to make reparations to the victim(s) (Zehr, 1990). Currently, there is a lack of community engagement and accountability in the Canadian criminal justice system.

A couple of decades ago Canada was a world leader in the restorative justice movement. However, the lack of momentum and a greater need of support from the government, along with insufficient levels of public awareness, hindered the movement significantly. Parallel to this decline in Canada, other countries such as England and Wales have witnessed significant growth and awareness. In England and Wales, efforts

towards extensive research and development have laid a strong foundation for the implementation of restorative processes.

...unlike Canada, England quickly turned the recommendations put forward by the Justice Committee into a Green Paper for wider public consultation and feedback. ....What is clear, at this point in history, is that England, through engagement with a range of stakeholders, has turned the page that Canada failed to turn 20 years ago” (Morrison & Pawlychka, 2012, p. 373).

### **3. The Restorative Justice Development in England and Wales**

England and Wales are currently undergoing significant research and development in the advancement of restorative practices in the justice system. What follows is a brief history of restorative justice in England and Wales which includes the new RJ provisions in the 2010 Green Paper. The England and Wales model should not be considered the ideal standard for operationalizing restorative justice initiatives. More importantly they offer a good example of sustained praxis that provides prospective lessons for British Columbia of restorative justice processes that are guided by thorough research and development and evaluation.

#### **3.1. 2010 Green Paper: “Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders”**

*Restorative justice should no longer be seen as an optional add-on to Criminal justice, but the way we do justice in this country-giving victims and communities a voice in justice whenever they want to take part. Restorative justice-giving victims a role and a voice in justice-is not optional; it is real, effective justice that means something to the people most impacted by crime (Restorative Justice Council 2011 p. 12.)*

The Green Paper in England and Wales, *“Breaking the Cycle: Effective Punishment Rehabilitation and Sentencing of Offenders”* puts forth various recommendations for the criminal justice system, including numerous restorative justice provisions. This move stemmed from frustration with previous policies failing to prevent recidivism due to a lack of rehabilitative provisions and a need to solve the problems with the current justice system.

The fundamental failing of policy has been the lack of a firm focus on reform and rehabilitation, so that most criminals continue to commit more crimes against more victims once they are released back onto the streets. The criminal justice system cannot remain an expensive way of giving the public a break from offenders, before they return to commit more crimes...Our plans represent a fundamental break with the failed and expensive policies of the past. They are finding out what works-the methods of punishment and rehabilitation which actually reduce crime by reducing the number of criminals (Ministry of Justice, 2010, p.1-2).

Countless inmates were incarcerated for a brief period of time with no rehabilitative measures in place and because of this almost 50% will return to crime within the first year they are released (Ministry of Justice, 2010, p. 5). In order to break this destructive cycle of crime, a drastically new approach is required. The Green Paper lays out a proposed method based on four distinct principles. These principles consist of the following (Ministry of Justice, 2010, p. 7):

1. Protecting the public;
2. Punishing and rehabilitating offenders;
3. Transparency and accountability; and
4. Decentralisation restructuring.

The Paper proposed an overall increase in public safety through restorative justice processes for appropriate crimes which will increase victim satisfaction; decrease reoffending through various methods of rehabilitation; and increase more effective methods of community participation which aids in accountability and transparency of the justice system.

Overall, the proposals in this Green Paper are intended to improve public safety so that we can reduce the number of victims in the future. Greater use of restorative justice, as set out above can prevent the feeling of powerlessness which often results from being made a victim. Increased use of compensation and reparation will benefit victims directly while establishing the principle that offenders must take personal responsibility for their crimes (Ministry of Justice, 2010, p. 22).

Finally, the creators of the 2010 Green Paper recognize the importance of continuing to foster and strengthen the relationships between government and community agencies to ensure the policies outlined in the Green Paper will work and operate efficiently and



beneficially for all parties involved in the justice process; victim, offender and community (Ministry of Justice, 2010, p. 85).

In order to achieve our ambition for radical reform of our justice system, implement the range of policies set out in this Green Paper and achieve the benefits we want to see, it is essential that the Ministry of Justice works closely with our partners in other government departments and agencies”(Ministry of Justice, 2010, p. 85).

The use of Youth Offending Teams (described in more detail in the following sections) will be increased to further perpetuate the use of restorative justice. The Green Paper (2010) proposes to encourage skill building for panel members who wish to utilize restorative processes in situations where victims volunteer to participate (Ministry of Justice, 2010, p. 69).

### **3.2. Brief history of restorative justice in England and Wales**

Responding to juvenile delinquency has been a top priority for the England and Wales's government in the 20<sup>th</sup> century which is evident by multiple policy and legislative modifications (Fullwood & Powell, 2004, p. 30) and the victim-offender mediation programs in England and Wales were designed for youth (Marshall, 1996, p. 23). Isolated cases of victim-offender mediation were happening throughout England in the 1970's, initiated by individual probation officers or social workers (Marshall, 1996, p. 23). The restorative justice movement in the form of victim-offender mediation in England and Wales began with initiatives from the community with no help from the government (Gavrielides, 2007, p. 64; Umbreit, 2001, p. 235). “The structure and organization of victim-offender mediation in Britain, however, was basically a matter of practical experimentation and reinterpretation of these ideas in the context of social, political and justice system very different from that in America” (Marshall, 1996, p. 23). With this said the progression and further advancement of victim-offender mediation in England was further stimulated and informed by trips made to North America to get a firsthand look at victim-offender mediation programs (Marshall, 1996, p. 23). In the 1980s the restorative projects in England and Wales were based off American models (victim offender

mediation) which remained till the 1990s where New Zealand and Australian influences started to take over (Aertsen, Mackay, Pelikan, Willemsens and Wright, 2004, p. 18). As Umbreit (2001) asserts, in 1986 there were twelve mediation programs in England, and by the mid 1990's this number grew to twenty (p. 35). According to Marshall (1996) by the 1990's, victims were supported and encouraged to initiate restorative justice processes and more programs were accepting referrals from victims (p. 27). These programs needed support from detailed legislation; which started in 1996 with an Audit Commission report that reported the juvenile justice system as expensive and ineffective (Gavrielides, 2007, 64).

Following the aforementioned restorative initiatives and Audit Commission report, restorative justice processes progressed further in England and Wales. The New Labour Party came into power in 1997. One of their commitments was to rejuvenate and transform the criminal justice system by bidding farewell to the punitive measures put into place by the previous Conservative government and introduced early intervention and prevention programs including expanding the use of restorative measures (Muncie, 1999, p. 148). The recommendation to advance restorative justice in the youth criminal justice system in England and Wales was highlighted in the 1996 White Paper *No More Excuses* (McAlinden, 2011, p.386) written in response to a Audit Commission report that took a hard look at the youth justice system and its ineffectiveness (Home Office 1998 as cited in Gavrielides, 2007, p. 64-65). What eventually resulted from this White Paper was the 1998 Crime and Disorder Act which initiated three key restorative justice provisions; a Youth Justice Board (YJB); Youth Offending Teams; and the Reparation Order (Gavrielides, 2007, p. 65; Crawford & Newburn, 2002, p. 476; McAlinden, 2011, p.386). "Proposals made by the White Paper were implemented through the Crime and Disorder Act 1998. Under this Act, all agencies operating within the youth justice system would prioritize prevention of youth offending (Fullwood & Powell, 2004, p. 30). This Act combined with the Criminal Evidence Act in 1999 paved the way for multiple restorative options for first time youth offenders (McAlinden, 2011, p. 386; Miers, 2004, p.28).

*Youth Justice Board (YJB)*

The Youth Justice Board (YJB) is led by 10 professionals from England and Wales selected by the Home Secretary (Stahlkopf, 2008, p. 457). The YJB is a non-executive, non-departmental public body that monitors the youth criminal justice system and distributes and promotes good practice (Fullwood and Powell, 2004, p. 31). The YJB has been a major sponsor of research on restorative justice in England and Wales since its creation (Walklate, 2005, p. 169). The YJBs' main duties include: overseeing the policy and operation of the youth justice system; the active managing of aggregate information; the creation of crucial performance indicators; and the formation of an overall strategic plan (Stahlkopf, 2008, p. 458). With this comes the overall responsibility of effective managing practice for youth by making sure youth are dealt with through practices that are backed by evaluative research (Fullwood & Powell, 2004, p. 31-32). To support this, evaluations were conducted on programs throughout England and Wales. Evaluators concentrated and collected data on key areas including (Fullwood & Powell, 2004, p. 32):

1. The way in which programmes were implemented;
2. The involvement of local agencies;
3. The operation and management of the programme; and
4. Impact of the various initiatives.

The evaluations, despite time and methodological limitations, revealed promising approaches in working with young offenders. The initial outcomes of many programmes being implemented showed reductions in antisocial and offending behavior and improvements in educational attainment (Fullwood & Powell, 2004, p. 32). This is an example of the effective research and development practices that took place in England and Wales to aid the advancement of effective restorative justice processes.

Another example of effective research is the significant evaluative measure created by the YJB; the National Qualifications Framework. The National Qualifications Framework concentrates its effort on training staff and provides them the resources to adequately follow the precepts outlined in the Key Elements of Effective Practice (Fullwood & Powell, 2004, p. 37). The creation and plans of the National Qualifications Framework is a result of partnerships between the youth workers and managers, government and higher education institutions (Fullwood & Powell, 2004, p. 37-38).

“Through this partnership, a series of learning pathways for youth justice practitioners has been developed which will provide staff with the skills to meet the challenges of delivering the services described in the *Key Elements of Effective Practice*” (Fullwood & Powell, 2004, p. 38). The YJB is committed to research and development of effective practices for youth crime and is reviewed annually to augment the body of effective evidenced-based research (Fullwood and Powell, 2004, p. 39). Evidently, conducting thorough and extensive research on restorative justice processes is a priority in England and Wales.

#### *Youth Offending Teams (YOTs)*

A significant development under The Crime and Disorder Act 1998 was the formation of Youth Offending Teams (YOTs) (Fullwood & Powell, 2004, p. 31). “With the 1998 Act, the newly created youth offending teams (YOTs) became the hub of youth justice services, the main vehicle by which the principle aims of the youth justice system were to be delivered” (Stahlkopf, 2008, p. 455). YOTs are multiagency teams generally comprised of the following individuals: probation officers; police officers; social worker; education welfare workers; health workers; volunteers from the community; and other local authorities that are deemed a necessity (Stahlkopf, 2008, p. 457; Fullwood and Powell, 2004, p. 31; Ministry of Justice, 2010, p. 31). This multiagency approach is seen as essential in the attempt to tackle juvenile offending by the government; therefore the purpose of the creation of the YOTs was to gather a diverse group of authorities and use their combined knowledge and abilities to streamline the availability of services (Stahlkopf, 2008, p. 457). Each YOT is responsible for organizing local youth justice services and in charge of an assortment of for a variety of managerial duties (Stahlkopf, 2008, p. 457). The underlying theme of the 1998 Act was prevention of juvenile offending through the promotion of more effective ways to stop the escalation of youth disobedience into youth offending. YOTs were a key factor in this goal.

#### *Referral Orders and Youth Offender Panels (YOPs)*

The 1999 Youth Justice and Criminal Evidence Act (YJCEA) took the idea of restorative justice even further. The YJCEA instituted the referral order which shifted the

focus of the juvenile justice system to a more restorative approach (Stahlkopf, 2008, p. 455; Crawford & Newburn, 2002, p.476) “Under the 1999 Act, the referral order became the new primary sentencing disposal for young people in England pleading guilty and convicted for the first time by the courts of a wide array of offences (Home Office, 1999, as cited in Stahlkopf, 2008, p. 457). The referral order introduced Youth Offender Panels (YOPs). YOPs consist of at least three members and include no less than two community volunteers who are selected by a member of the local YOT, and a YOT representative who leads the meeting along with one of the volunteers (Crawford & Newburn, 2002, p. 476; Home Office, 1999, as cited in Stahlkopf, 2008, p. 457). The restorative process employed is based on the conference model and the youth, together with the YOP settle on an agreement that requires the youth to make reparations to the victim or the community and attend a program that will help circumvent recidivism (Home Office, 1999, as cited in Stahlkopf, 2008, p. 457). In July 2000, there were 11 locations across England and Wales that implemented the referral order and YOP restorative process (Crawford and Newburn, 2002, p. 479).

### **3.3. Current Developments**

#### *Restorative Policing*

Restorative policing has returned to the fore with the arrival of a new UK Coalition government in 2010. Restorative policing is supported by the Association of Chief Police Officers (ACPO) and this has led to sustained interest in its development as a “low-bureaucratic disposal for low-level offending and as a critical tool within Neighbourhood Policing to assist in problem-solving and meeting community expectations” (Shewan, 2010, p. 2). Restorative policing will be used for youth and adult offenders for low and medium rank offences through 3 key policy advances (Shewan, 2010, p. 6-8):

1. Partnership problem-solving strategies,
2. Restorative conferencing; and
3. Neighbourhood justice panels.

Changes in the way police in England and Wales operate have been largely due to the acceptance of restorative processes. This acceptance is mainly due to the increasing trend towards community-oriented practices (Paterson & Clamp, 2012, p. 1). Restorative policing has a plethora of advantages and selling points including (Paterson & Clamp, 2012, p. 2):

1. An opportunity to improve the delivery of policing services through enhanced police discretionary decision making;
2. Community engagement; and
3. The reduction of the bureaucratic burden placed upon police officers.

Restorative policing is often promoted on the basis that it may reduce re-offending, have significant cost benefits and improve public confidence and victim satisfaction through direct engagement with the affected parties in the justice process. The development of restorative initiatives within policing can, as such, be understood as attempts to (Paterson & Clamp, 2012, p. 4):

1. Repair the harm caused by offending behavior;
2. Reinvigorate the use of police discretion;
3. Encourage the informal resolution of community problems;
4. Enhance public confidence in policing; and
5. Reduce costs, all policy issues that are salient across a number of international jurisdictions.

These policing measures represent a significant increase in the use of restorative justice processes in the justice process in England and Wales.

#### *YOTs and YJBs*

The creators of the 2010 Green Paper decided that the Youth Justice Board was no longer necessary, since for the past decade the youth justice system had not changed and YOTs were “firmly established in delivering youth justice services on the ground” and the Ministry of Justice will take over this independent body’s roles and duties (Ministry of Justice, 2010, p. 75).

To increase the communities knowledge of what Youth Offending Teams are doing and how they are performing, the Green Paper proposes to increase the amount of community volunteers working in the youth justice system, which will increase community involvement, and the public will

have access to more published data on the progress and operations of YOTs (Ministry of Justice, 2010, p. 76).

The continued use of Youth Offending Teams is encouraged by the designers of the Green Paper. The Green Paper proposes to put an end to the cycle of youth offending by expanding the utilizing restorative justice, simplifying out of court disposals, and implementing parenting orders when parents aren't sufficiently involved (Ministry of Justice, 2010, p. 67). The Green Paper (2010) acknowledges restorative justice as a main element in the youth justice system; and wishes this to continue and flourish aided by the use of YOTs (Ministry of Justice, 2010, p. 69). To facilitate restorative processes the 2010 Green Paper also ensures the continuation of funding for YOTs. "There will continue to be a youth justice grant from the centre that is directed specifically to Youth Offending Teams and is outside of area based grants to local authorities. More than ever we need all partners involved with youth justice to work together to ensure that the local delivery of youth justice is properly resourced" (Ministry of Justice, 2010, p. 73). With this funding and clear support for the YOTs comes an increase in responsibility and assessing them to ensure accountability of high performance of each YOT for three focal objectives (Ministry of Justice, 2010, p. 76):

1. Reducing custody numbers;
2. Reducing the number of first time entrants to the youth justice system;  
and
3. Reducing offending.

Youth Offending Teams will also aid and be monitored with regards to increasing community participation through the use of community volunteers and accountability, as they require more data on the effectiveness of the services provided (Ministry of Justice, 2010, p. 76).

### *Neighbourhood Justice Panels*

A key restorative provision in the Green Paper is the Neighbourhood Justice Panels (Ministry of Justice, 2010, p. 80). Creators of the Green Paper advocated the piloting of Neighbourhood Justice Panels for minor crimes and anti-social behavior (Ministry of Justice, 2010, p. 81). Neighbourhood Justice Panels "provide a form of

restorative justice in which local volunteers and criminal justice professionals are brought together to decide what action should be taken to deal with some types of low level crime and disorder” (Ministry of Justice, 2010, p. 81). Communities, especially those affected by crime need to be given a voice (Ministry of Justice, 2010, p. 87). The Government is committed to developing power and accountability to local areas; and Neighbourhood Justice Panels are an example of this. Community involvement in justice issues has many benefits. Crawford and Newburn (2002) state:

The participation of ordinary citizens in the deliberative processes of criminal justice can help to ensure that proceedings which may otherwise be dominated by technical, bureaucratic or managerial demands also accord to the emotional and expressive needs of responses to crime and, in a similar vein, ensure fairness. It can facilitate the ‘opening up’ of otherwise introspective professional cultures, which often mitigate against greater public participation (p. 489).

The 2010 Green Paper proposes to further community participation through increasing opportunities for volunteering for the citizens who want to have a role in combating crime in their communities (Ministry of Justice, 2010, p. 84). In the response the Restorative Justice Council wrote of the 2010 Green Paper, community ownership of justice matters was stated as the reason the advancement of Neighbourhood (or Community) Justice Panels was well received (Restorative Justice Council, 2011, p.7).

We welcome the Government’s proposal to pilot the further use of Community Justice Panels, and encourage them to ensure investment at local level into these and other community based models of RJ. Volunteer based agencies can provide high quality and cost-effective RJ with community ownership... (Restorative Justice Council, 2011, p. 7).

Neighbourhood Justice Panels are different than community-based restorative justice programs in British Columbia. Neighbourhood Justice Panels were implemented by government initiatives whereas in BC, the programs were largely instigated by community members. This is an ongoing difference between England and Wales and BC restorative justice experience. Nevertheless, neighbourhood Justice Panels, do reflect England and Wales government’s commitment to further engaging community in the justice process.



The current restorative justice developments in England and Wales reflect Sharpe's five touchstones. Inviting full participation and consensus is emphasized in the recommendations in the Green Paper, which encourages the participation of the victim, offender and community in the justice process when appropriate. Through this inclusive framework, victims, offenders and communities are enabled to restore, reunite what has been divided, and heal by breaking the "destructive cycle of crime" (Ministry of Justice, 2010, p. 5). Accountability is also stressed in the Green Paper. The following points from the Green Paper (2010) highlight the multiple aspects of accountability in the justice process in England and Wales (Ministry of Justice, 2010, p. 84):

1. 2010 Green Paper emphasized the importance of public access to information about the crime and recidivism taking place in their community, along with the services in place to deal with it;
2. The Green Paper proposes to look into what information should be provided to each community to increase accountability in the criminal justice system; and
3. In addition, we want to increase community awareness of and involvement in a range of local action on crime and justice issues, whether this is through attendance at police beat meetings, involvement through regular local consultative or other criminal justice partnership events or through more formal volunteering opportunities. The aim is to increase community involvement in action to tackle low-level crime and anti-social behaviour and to increase community resilience and influence.

The Green Paper (2010) also highlights the importance of shifting accountability to local areas instead of the central government.

We will support local criminal justice services to work more flexibly and efficiently together and give private, voluntary and community sector providers more opportunities to deliver local services. We will give people better information about how crime and reoffending affects their community and more opportunity to find out what is being done about (Ministry of Justice, 2010, p. 77).

Finally, each restorative development in England and Wales also benefits and strengthens the community through increased community participation (e.g. Neighbourhood Justice Panels) in the justice process to prevent further harms.

In contrast to the Canadian experience, the England government decided to put forward several recommendations by the Justice Committee into a Green Paper to

receive reactions and feedback from the general public (Morrison and Pawlychka, 2012, p. 373). This imperative step forward gave the public a document with clear goals and objectives for improvement of the justice system. The recommendations put forward are supported by thorough research, various evaluative measures, and strategic partnerships. These strategic restorative justice initiatives in England and Wales provide important lessons for the British Columbia experience. British Columbia can look to England and Wales as an example where extensive research and development along with evaluation, are ensuring the sustained advancement and success of restorative justice processes. This level of praxis is necessary to meet the needs of the diverse communities, including First Nations communities, within British Columbia, for the development of unique responses that are sustained in British Columbia.

## **4. Restorative justice development in Nova Scotia**

*Canada's high levels of incarceration, burgeoning criminal justice system costs and public skepticism about the efficacy of the criminal justice system were all present in the minds of strategically placed policy makers, legal practitioners, correctional officials, victims' services personnel and academics in Nova Scotia...But Nova Scotia criminal justice professionals were aware of alternatives developing elsewhere (Archibald & Llewellyn, 2006, p. 300-301).*

### **4.1. Brief history of restorative justice in Nova Scotia**

The growth of the restorative justice movement in Nova Scotia (NS) differs greatly from the British Columbia experience. British Columbia's restorative justice developments have been largely community initiated and community-led, with the government playing a supporting role. In Nova Scotia; the individuals who started the movement worked within the justice system, and knew from experience with various justice-related issues, what was needed for a movement of this nature to succeed. The Nova Scotia Restorative Justice Program (NSRJP or NSRJ) was initiated by professionals, not the community: "Community justice organizations were present from the beginning, in the form of alternative measures societies and representatives from Aboriginal communities, but they were not the initiators of the program. Criminal justice system actors, opinion leaders and administrators were at the forefront" (Archibald & Llewellyn, 2006, p. 303). Though both provinces turned to restorative justice processes out of frustration with the current justice system, this crucial variance in the way the foundation for restorative justice was laid in both provinces provides a good comparison for this paper. In the Nova Scotia experience, restorative justice practices are being informed and developed through systematic research; and provides a good comparative example to inform the British Columbia experience.

John Braithwaite spoke at the Dorothy J. Killam Memorial Lecture held at Dalhousie University in October 1996 on restorative justice and its potential to create a better future for the justice system. This lecture helped plant the seed in Nova Scotia for restorative justice processes. Also, it is rumoured that in 1997, during an airplane ride following a restorative justice conference in Vancouver, two defence counsels were inspired and brought ideas back to Nova Scotia (Archibald & Llewellyn, 2006, p. 301). Following this conversation an ad hoc committee was formed to organize a restorative justice conference; invitees consisting of local criminal justice members and restorative justice experts from around the country. At this conference it was decided that a restorative justice project would be set up in Nova Scotia by the Nova Scotia Department of Justice (Archibald & Llewellyn, 2006, p. 301-302). Restorative justice was a chance to dramatically change the way the justice system was operating in Nova Scotia (Archibald and Llewellyn, 2006, p. 300). “The Department of Justice hired a restorative justice coordinator and created a steering committee which was created to facilitate a discussion amongst four separate groups representing each entry point: police, prosecutors, judges and correctional officers” (Archibald & Llewellyn, 2006, p. 302). This group was responsible for creating the framework guidelines and program authorization for the Nova Scotia Restorative Justice program which had four pilot projects by November 1999 (Archibald & Llewellyn, 2006, p. 302). The following restorative options are now available in Nova Scotia (Restorative Justice Program Protocol, 2007, p. 9):

1. Police formal cautions;
2. Restoratively-oriented options;
  - a. Accountability programs;
    - i. Accountability sessions;
    - ii. Group accountability sessions.
  - b. Adult diversion; and
  - c. Restorative justice process.
    - i. Victim-Offender Conferences;
    - ii. Restorative Conferences;
    - iii. Sentencing Circles.

While these are similar to the options provided in British Columbia, with the exception of adult diversion, the programs are more strategically integrated into the overall justice system, with professionals at the forefront of the restorative process.

The range of possible outcomes for these processes includes (Restorative Justice Program Protocol, 2007, p. 14-15):

1. Restitution/Financial compensation;
2. Community service work;
3. Personal service to the victim;
4. Community reconciliation;
5. Education programs;
6. Assessment;
7. Any other outcome agreed upon by the participants;
8. No further action; and
9. Sentencing options under the YCJA if the restorative process is a sentencing circle.

This vast variety of options to select from is imperative to the success and healing process of all the affected parties.

## **4.2. NSRJP: Beginning to present**

*The movement toward restorative justice in Nova Scotia was born not of a “grassroots” initiative, but rather from frustration among a key cross-section of criminal justice stakeholders concerning the inadequacy of the mainstream system’s response to the phenomenon of crime (Archibald & Llewellyn, 2006, p. 300).*

The Nova Scotia Restorative Justice Program has led the implementation of restorative justice in Nova Scotia. The NSRJP is one of the oldest and the most all-inclusive restorative justice programs in Canada (Archibald and Llewellyn, 2006, p. 297). When the program was being developed, the Department of Justice chose to contact groups that were already providing alternative methods of justice and found out if they were willing to adapt their practices to fit the values of restorative justice (Archibald & Llewellyn, 2006, p. 328). This greatly aided the implementation process, along with the steady growth and acceptance of restorative measures in Nova Scotia. In Nova Scotia, restorative justice is operationalized as a relational form of justice where justice is achieved when relationships that were broken through the act of crime are repaired and restored (Archibald & Llewellyn, 2006, p. 305). “...the NSRJ program reveals the grounding and commitment of the program to this relational conception of justice”

(Archibald & Llewellyn, 2006, p. 306). The four overall goals and four objectives for the NSRJP, established after a year of consultation with police officers, prosecutors, judges, and correctional officers, reflect this commitment (Archibald & Llewellyn, 2006, p.302). The “NSRJ has been committed in principle to goals that embody a broadly conceived restorative theory of justice with potentially far reaching implications not only for offenders, victims and their families, but also for communities at large” (Archibald, 2006, p. 32). What is unique about the following goals is that they truly reflect the participants involved in the founding of the program along with the theoretical foundation (Archibald & Llewellyn, 2006, p. 304). The guidelines set out by the NSRJP are (Archibald & Llewellyn, 2006, p. 304):

1. Reduce recidivism;
2. Increase the satisfaction of victims with the justice process;
3. Increase the confidence the public has in the justice system; and
4. Encourage the strengthening of communities.

The following are objectives that supplement the for-mentioned goals of the NSRJP (Restorative Justice Program Protocol, 2007, p. 1-2):

1. Provide a voice and opportunity to participate for the victim and the community;
2. Repair the harm caused by the offence;
3. Reintegrate the offender; and
4. Hold the offender accountable in a meaningful way.

These goals and objectives are a clear example of thorough research being put into practice; given the extensive consultation process with various members of the justice system that took place before they were composed. Along with being an example of praxis; these goals and objectives, as a whole, adhere to Sharpe’s touchstones of restorative justice. Participation in the justice process; restoring the harm the offence caused; offender accountability and an increase in public confidence; reintegration of the offender and satisfying victim needs and; community participation and strengthening are all encouraged in various ways through these goals and objectives. Currently, the NSRJP concentrates on youth ages 12-17 (Archibald and Llewellyn, 2006, p. 298). The NSRJP has four main sources for its referrals. Referrals for restorative conferences come from (Archibald & Llewellyn, 2006, p. 297):

1. Police;
2. Correctional officers;
3. Prosecutors; and
4. Judges.

Along with this the NSRJP utilizes restorative justice at four points throughout the criminal justice process (Archibald, 2005, p. 40):

1. Pre-charge;
2. Post-charge;
3. Post-conviction; and
4. Post-sentence

The NSRJPs' projects are run by non-profit agencies established in the local communities and consist of both paid staff and volunteers and are funded by the provincial government (Clairmont, 2002, p. 15). Volunteers are relied upon significantly and the NSRJ follows specific standards when screening and training volunteers (Archibald & Llewellyn, 2006, p.323). These standards were created by a co-ordinator, hired by the Department of Justice, who worked with community representatives, who combined a review of global literature and agency experience to produce a provincial guide on standards and learning materials (Archibald and Llewellyn, 2006, p. 323). As Archibald and Llewellyn (2006) state "here is an area where restorative justice and theory meet" (p. 323).The community agencies do training as adjusted to their particular needs, but must cover the following standards:

1. Orientation to the justice system;
2. Restorative justice principles and models;
3. Communications skills; conflict resolution skills;
4. Facilitation of restorative justice processes;
5. Working with victims of crime;
6. Understanding adolescence;
7. Supervision of young person's;
8. Agency case management processes; and
9. Training on cultural, social and economic diversity.

The benefits of these standards are two-fold: 1) They serve as criteria for community agencies to follow when supervising and evaluating their volunteers and; 2) The Department of Justice can evaluate the performance of the agency based on these standards (Archibald & Llewellyn, 2006, p. 323). Finally, "implementation of these

standards may have a great deal to do with the aspiration of the program to inspire public confidence in the program and the justice system more broadly” (Archibald & Llewellyn, 2006, p. 323). These benefits have aided in the advancement of restorative justice processes in Nova Scotia providing a standard of praxis for the British Columbia experience that includes clear goals and operational measures. The challenges for British Columbia will be to implement this standard of praxis in a larger, more diverse, province currently experiencing significant growth.

Engaging communities is a significant aspect of the implementation of restorative processes and the standards they follow in Nova Scotia. The NSRJ-CURA Website (2012) provides the following statement to this end:

The program is fundamentally committed to community ownership of the development and implementation of restorative justice processes while maintaining a key role for government as overseer of the Program. In this role government insures an adequate legal framework, consistent operational standards and ongoing monitoring of implementation.

Community agencies had a significant amount of input in the standards created for the NSRJ, however even with this input, difficulties arose. As with every province in Canada, Nova Scotia has a variety of communities with unique and challenging needs. Soon after the NSRJ was created, issues regarding two specific communities developed in regards to which the program was fulfilling their obligations to the Mi'kmaq and Afro-Canadian communities (Archibald & Llewellyn, 2006, p. 335).

The Mi'kmaq Youth Options Program (MYOP) had been conducting healing circles five years before the creation of the NSRJ; and the relationship between the two programs was complicated (Archibald & Llewellyn, 2006, p. 335). Mi'kmaq spokespersons were in continuous dialogue with NSRJ administrators and were even represented on program committees. However, they were determined that the Aboriginal justice they were providing not be subjected to provincial standards and rules, but firmly rooted in Aboriginal rights and traditions (Archibald & Llewellyn, 2006, p. 335). “In short, the Mi'kmaq community asserted its constitutional and treaty rights to run restorative justice in an independent fashion in accordance with Mi'kmaq traditions” (Archibald & Llewellyn, 2006, p. 336). This issue was resolved due to flexibility on both



sides. The Mi'kmaq Customary Law Program is governed by the provincial restorative justice protocol; however, they are able to interpret and apply it so it is in harmony with Aboriginal traditions (Archibald & Llewellyn, 2006, p. 336). "In addition, the Mi'kmaq Customary Law Program differs from the other community agencies in that it facilitates all restorative justice process for all First Nations communities throughout the province" (Archibald & Llewellyn, 2006, p. 336). Benefits of this compromise include (Archibald & Llewellyn, 2006, p. 336):

1. Healing circles are having a continuing impact on restorative justice in Nova Scotia;
2. Aboriginal cultural differences are being respected; and
3. Aboriginal culture is having a positive influence as a source of alternative ideas on restorative justice practice for the other community agencies.

This compromise provides a good example for how governments can work and partner with unique communities that are already conducting restorative processes in their communities when deciding to advance restorative justice processes in the justice system

The second community with unique needs in Nova Scotia is the Afro-Canadian community. Before the NSRJ was created, racist discrimination had been acknowledged as a serious issue by the Marshall Report which was published in 1989; but the creators of the NSRJ believed restorative programming could respond to the unique needs of the black community (Archibald & Llewellyn, 2006, p. 337). This was not the case, and after about a year conflict surfaced (Archibald & Llewellyn, 2006, p. 337). "The Afro-Canadian community did not see themselves represented among agency staff or the agency board of directors. Representatives of the black community perceived restorative justice as just another effort by a government agency, characterized by systemic discrimination, to impose yet another social service program on their community without consultation" (Archibald & Llewellyn, 2006, p. 337). The following initiatives aided in alleviating this issue (Archibald & Llewellyn, 2006, p. 337-338):

1. A new agency executive director who had strong connections and respect for the Afro-Canadian community was hired;
2. Black staff members were also hired; and
3. The “African Nova Scotian Youth Pilot Project” was funded by the Department of Justice. This project involved opening agency sub-offices in two black communities in the Halifax area, supported by professional restorative justice workers and operating with Afro-Canadian volunteers trained in restorative process facilitation whose focus would be their local communities.

These two examples show the flexibility of the NSRJ and restorative processes in Nova Scotia; in that, they were able to meet the needs of unique communities, through strategic partnerships and thorough, thoughtful praxis. The Nova Scotia experience can prove useful and informative for advancing the development of restorative justice processes in British Columbia, which will need to take on these challenges with a much larger range of diverse communities, many of whom are currently practicing some form of restorative justice.

Research and development of restorative processes is prioritized in Nova Scotia. To this end, there are multiple examples that demonstrate this commitment.

Issues with implementing restorative measures into the criminal justice system are to be expected and dealt with collaboratively; as collaboration and inclusion are two principles valued in the restorative process...Presently in Nova Scotia when issues arise they are handled collaboratively between university researchers and chief stakeholders in the NSRJ (Archibald & Llewellyn, 2006, p. 342).

An example of research conducted on restorative processes in Nova Scotia is a five year evaluation. This evaluation was conducted, beginning with a pre-implementation feasibility assessment. The evaluation consisted of the following evaluation techniques (Clairmont, 2005, p.4):

1. Short “exit questionnaires” completed by all RJ session participants;
2. Follow-up telephone interviews with all participants indicating their willingness to be interviewed on the exit form;
3. Direct observation of a sampling of the RJ sessions;
4. Utilization of provincial data systems (including a new one the RJIS, created for the NSRJ program); and

5. Panel studies (i.e., three waves of interviews, eighteen months apart) of CJS and community leaders, and regular monitoring of agency caseload (e.g. number and type of referrals).

The following were the key outcomes examined for the evaluation are: (Clairmont, 2005, p. 5):

1. Participation and satisfaction of the RJ participants;
2. Recidivism; and
3. Community impact.

In terms of its stated objectives in 1999, it can be argued that the NSRJ initiative has been quite successful. The following are some of the points presented by Clairmont his final evaluation report in 2005 (p.6-9):

1. It has represented a major effort to incorporate victims into the justice process and its success over the years in that regard has been significant;
2. Victims who have participated in RJ sessions have been very positive about their experience and their treatment by RJ staff and facilitators as determined by exit and follow up interviews;
3. Profound difference in victim satisfaction between the court and the RJ processes;
4. Positive views of offenders and offenders' supporters, community representatives, and criminal justice players who participated in the RJ processes;
5. Significantly reduced the court-load by 5% between 2000 and 2003;
6. RJ referrals led to more services and attention for both victims and offenders;
7. Cost per referral has been estimated at roughly \$1000, well under the cost for youth court according to knowledgeable informants but such comparisons are of limited value; and
8. The level of recidivism among RJ clients, both in the RJ path and subsequently in the court path, has been significant while probably less than their counterparts channeled first into the court process.

Clairmont (2005) found that, overall the restorative justice experience in Nova Scotia was "a very positive one for all categories of participants and it was an experience that they would recommend to others involved in similar cases of offending" (p. 158). This thorough evaluation of the NSRJ after five years is a testament to the Nova Scotia governments' commitment to research. Since this evaluation research and development

has continued as the program progresses. The following statement taken from the NSRJ Website (2012) confirms this ongoing commitment:

The rapid embrace of RJ by academics and policymakers has created a demand for more detailed and comprehensive research on the practice of restorative justice. Research is required that explores the issues and problems that arise with institutionalized practice. The NSRJ-CURA seeks to fill this gap and is uniquely situated to do so given the partners experience and involvement with the implementation and development of the Nova Scotia Restorative Justice Program.

The unique (for the Canadian experience) relationship between university and community the NSRJ- CURA (Community University Research Alliance) has within Nova Scotia, has the ability to ensure the restorative justice processes in Nova Scotia are guided by research and “respond to some of the challenges of institutionalizing comprehensive restorative justice in theory and practice” (NSRJ-CURA, 2012). The NSRJ-CURA conducts research collaboratively with community and university partners. This entails community researchers play a key role in the all aspects of research along with the university-based researchers (NSRJ-CURA, 2012). This is an example of how community is represented in restorative processes in Nova Scotia.

A significant issue for many restorative justice programs across Canada is access to funding. Restorative justice programs across Canada struggle to obtain adequate (if any) funding. This places an enormous amount of stress on the program and hinders the vast potential these programs have to provide restorative processes. For example, Community Accountability Programs in British Columbia receive a mere \$2,500 a year from the provincial government (Cowper, 2012, p. 41). Fortunately for the NSRJ, the province of Nova Scotia has shown their commitment to this program by providing roughly 1.5 million dollars per year (Archibald & Llewellyn, 2006, p. 298; Clairmont, 2005, p. 3). This funding provides full-time jobs for over 40 people throughout the province, along with training, specific program development, equipment and travel costs (Clairmont, 2005, p. 3). This program is also funded through a partnership with the Community University Research Alliance (CURA).

It is important to note that restorative programming is sustained in Nova Scotia as “a fully established component of the Department of Justice and the community through its partnership with regional non-profit organizations (Archibald and Llewellyn, 2006, p. 297; Clairmont 2005, p. 5). The NSRJP is unique in the Canadian context because it has become institutionalised and because of its inclusive, consistent engagement of the whole criminal justice system (Clairmont 2005, p. 204). The institutionalisation of restorative justice process in Nova Scotia essentially entails the advocates and leaders of the program have a place at the Justice table which allows them to respond to program trials and engage in planning without having to continually stress about the program’s year to year renewal, while engaging communities through the program’s partnership with regional non-profit societies (Clairmont 2002, p. 204). Although the institutionalization of restorative programming does not ensure long-term survival, there are benefits including (Clairmont, 2005, p. 5):

1. Providing some security for RJ personnel;
2. Enabling the program to plan and meet problems and crises rather than expending an inordinate amount of time and effort securing its periodic renewal; and
3. Other sections of the Department of Justice relate to the NSRJ as a partner in matters of policy and administration rather than as a marginal player to the criminal justice system.

However, Clairmont (2005) warns there is the potential that the “RJ program becomes ensnared in the bureaucratic modality and becomes more court-like in its approach” (p. 5). While this is a caution worth heeding, the community connections restorative justice programming in Nova Scotia has made will certainly work as a counter-balance. With restorative justice programs already thriving in so many communities in British Columbia, government officials can look to Nova Scotia as an example of how to provide more opportunities for research and development, improved community-government links, and increased financial stability; which will inevitably facilitate improved practices, helping these programs reach their full potential.

The progression of restorative processes in Nova Scotia to date is significant for future expansion in the province; while also lending a good example for implementation of similar programs throughout Canada (and for the purposes of this paper, British

Columbia) (Archibald & Llewellyn, 2006, p. 341). Not only has the NSRJ expanded across the entire province, agencies are taking pre and post charge referrals from the criminal justice system (Clairmont, 2005, p. 4). Also encouraging, is the NSRJ has managed to survive a change of government- “indeed it was strengthened by the subsequent government as if it had been recognized for its inherent value in a non-partisan sense” (Archibald & Llewellyn, 2006, p. 311-312).

The Nova Scotia restorative justice program has grown from its early pilot stages into a relatively mature and comprehensive program. Thus far, its implementation has maintained relatively steady progress in accordance with principles of restorative justice. Mechanisms are in place to allow community organizations to respond restoratively to victim, offender and community development needs while not sacrificing the stability of the rule of law or the force of the traditional criminal justice system, where the latter is required (Archibald & Llewellyn, 2006, p. 341).

While, comparatively, restorative justice processes were implemented more recently in Nova Scotia than in British Columbia, the amount of research conducted prior to implementation and continued through the development and advancement of these processes were more extensive. Consequently, Nova Scotia has a lot of valuable experience for British Columbia to consider as the province moves into a new period of justice reform. The following chapter will list and describe recommendations for restorative justice processes in British Columbia. These recommendations will be based on the information and data provided from the two comparison cases and the current Green Paper and response on justice reform in British Columbia.

## 5. Restorative justice development in British Columbia

### 5.1. Brief history of restorative justice in British Columbia

Restorative justice has developed and been implemented in British Columbia, despite a lack of research and development; as such, restorative justice has endured a marginalized position in British Columbia (Morrison & Pawlychka, 2012, p. 369). With this said restorative justice has a rich history in British Columbia and several different types of restorative justice have developed and/or been implemented in this province including: Victim Offender Reconciliation Programs (VORP); Community Accountability Programs (CAP); Community Justice Forums (CJF); and Sentencing Circles. Each type of program has its own unique history, development and position in the restorative justice movement in British Columbia. CAP programs are distinctive to the British Columbia experience and offer a unique perspective on the practice of restorative justice.

#### *Community Accountability Programs (CAP)*

*Perhaps there is no more contested a concept in the restorative justice literature, and beyond, than that of “community. Authors repeatedly acknowledge the difficulty in defining the concept. There is something intimate in the ideal of community, a sense of connectedness and belonging that is an unqualified good. Yet the ideal seems far away from what exists and is often referred to as community (Elliott, 2011, p. 192).*

Community is an important aspect of restorative justice programs in British Columbia. In British Columbia, community is operationalized and utilized in four core ways including:

1. Individuals who are directly or indirectly affected by an offense;

2. Individuals who support the victim or offender throughout the restorative process;
3. A source of volunteers and practitioners of restorative justice programs; and
4. A specific geographic area (e.g. Community Accountability Programs serve a specific community).

The Community Accountability Program (CAP) brings restorative justice processes into the hands of communities in British Columbia. In February 1998, the Community Accountability Program was launched to support communities seeking to develop restorative justice programs in addressing minor offences. CAP's have specific requirements they must meet in order to receive funding such as (Morrison and Pawlychka, 2012, p.368):

1. Accepting referrals for Category 3 and 4 offences only (e.g. property crime);
2. Be volunteer based;
3. Demonstrate community and criminal justice support; and
4. Adhere to the Ministry's Framework for Restorative Justice.

CAP's reflect the grassroots tradition restorative justice has in BC. Most CAP's utilize community justice forums as their facilitation model. Each program aims to address the unique situation of the community they are based in. This is a source of pride among advocates and practitioners, and while challenging, if sufficiently addressed in the creation and development of the program, could prove to be a great benefit. CAP's chiefly consist of community volunteers, which is quite distinctive of restorative justice programs in BC.

In some parts of the world, community volunteers are largely absent from RJ processes, which are facilitated mostly by criminal justice, social service or education professionals. In general, with the exception of British Columbia, with its unique history of community-based RJ, community engagement with institutionalized restorative processes is largely treated as an afterthought. The opportunities to create or strengthen social capital beyond the immediate circle of people affected by a harmful act are often unrealized (Elliott, 2011, p. 202).

There are currently approximately 45 CAPs in operation across the province and some programs have received provincial grant funding annually since CAP's inception in 1998 (Cowper, 2012, p. 41). This is a substantial number considering restorative justice is a



relatively recent development in BC. There are also community-based restorative justice programs that operate as not-for-profit organizations (NGOs). An example of this type of program is North Shore Restorative Justice Society, founded in 1998, which is a non-profit community based restorative justice program funded by the City and the District of North Vancouver, and the District of West Vancouver (North Shore Restorative Justice Society, 2011). While these restorative justice approaches are practiced in British Columbia, and have enjoyed varying degrees of success and positive results, CAPs and restorative justice based NGOs have struggled to gain financial stability and public support in BC. If restorative justice processes are to reach their full potential and be given a real opportunity in BC, funding will need to be increased.

As well as the Community Accountability Programs, and other community based programs such as Community Justice Initiatives, there are 32 Aboriginal Justice Programs operating in British Columbia (Cowper, 2012, p. 41). Each program has its own distinct processes, utilizes various traditional methods of Aboriginal Justice, and has a unique relationship to the broader criminal justice system. For example, the Daylu Dena Council Justice Program utilizes the council approach. The council consists of young people, Elders and various other members of the community. To be accepted into the program each party (victim, offender and community) must agree to participate and the offender must take responsibility for the offense (Department of Justice Website, 2012).

Family group conferences have also been utilized in British Columbia by the Ministry of Child and Family Development (MCFD) since 2003. Referrals from judges can come from requests from Crown counsel, defense counsel or a probation officer and are based on voluntary participation from the young person and the victim and the consent of both parties' lawyers (Morrison & Pawlychka, 2012, p. 367). British Columbia currently has 10 conference specialists who hold conferences for youth justice cases, based on all categories (with limitations for specific sexual offenses), and child-protection cases. No research and development data on these conferences are currently available (Morrison & Pawlychka, 2012, p. 367).

## **5.2. Current restorative justice developments in British Columbia**

Restorative justice in British Columbia has been acknowledged as an approach to crime that considers the needs of victims, holds offenders accountable and engages communities in criminal justice matters relevant to them. Repairing the harm caused by crime is a key goal throughout the restorative justice process: “In this approach, crime is understood not only as breaking the law, but as a violation of people and relationships and a disruption of the peace in a community” (Ministry of Public Safety and Solicitor General, 2011, p. 3). In British Columbia, restorative justice is generally utilized for minor crimes; however programs such as CJI employ restorative justice processes for serious crime and offenders (Ministry of Public Safety and Solicitor General, 2011, p. 3). British Columbia has been known as a leader in the field of restorative justice; however, this international distinction has lost ground over time.

Despite on-going challenges, there are many remarkable restorative justice programs in British Columbia that are operated by dedicated, hardworking individuals who truly believe in the values and processes embedded in restorative justice. In response to the need for program evaluation, a small number of these programs have begun to partner with universities to obtain evaluations (Morrison and Pawlychka, 2012, p. 369), including North Shore Restorative Justice (serving North Vancouver and District, West Vancouver, Lions Bay and Bowen Island; Communities Embracing Restorative Action (serving Coquitlam, New Westminster and Port Moody); Abbotsford Restorative Justice and Advocacy Association (serving Abbotsford); and Restorative Justice Victoria (serving Victoria). While this is an encouraging start, much more systematic evaluation is needed to better understand how and to what benefits community-based restorative justice programs serve British Columbians (Morrison and Pawlychka, 2012, p. 369).

Thus, in terms of fulfilling at least one recommendation (19) of the House of Commons Standing Committee on Justice, British Columbia has failed in that VORP is no longer supported in the province and there is a very poor evidence base across existing programs that have replaced VORP. In other words, BC lacks the research and development that was recommended over 20 years ago. Thus, both in practice and evaluation, restorative justice remains a marginal practice on the fringes of the justice system in British

Columbia. The larger question that criminologists need to address is whether the marginal experience of restorative justice programs in British Columbia is being replicated in other jurisdictions across Canada and elsewhere (Morrison & Pawlychka, 2012, p. 369).

More recently, the 2012 Green Paper in British Columbia discusses the need for justice reform, and the Review of the Green Paper makes recommendations for the advancement of restorative justice processes.

### *2012 Green Paper & Review*

The 2012 Justice Reform Green Paper, *Modernizing British Columbia's Justice System*, called for serious changes in the way justice was delivered in British Columbia. Composing a Green Paper for justice reform in BC essentially means three things (Ministry of Justice, 2012, p. 8):

1. It is plain that serious consideration must be given to solving a challenge faced by government;
2. Determining the right course of action first required bringing the issues to the attention of the public and key stakeholders in a clear manner; and
3. The government is committed to announcing legislation or other meaningful action in a subsequent White Paper.

The Green Paper was produced to take a look at the way the criminal justice system “does business” particularly due to the increases in cost and delays in the BC criminal justice system (Ministry of Justice, 2012, p. 9-10), while the overall crime rate in BC appears to be declining. Change is required for the following key reasons:

1. The justice system is important for families;
2. The justice system is important for jobs; and
3. The justice system can be strengthened through transparency and open data.

Families require the justice system for resolving major social challenges; BC's economy requires the justice system to regulate the “basic rules of business”; and the general public requires accurate and timely data on the criminal justice system to become empowered and engaged (Ministry of Justice, 2012, p. 9-10).

Geoffrey Cowper was assigned, as an outside observer to write a review and provide recommendations based on the mandates of the Green Paper. Cowper (2012) included ideas from responses and comments to the Green Paper along with information gathered through consultations with the general public, justice system participants and workers, and individual organizations and programs to supplement his findings and data. His various recommendations include the support and further development and advancement, of restorative justice processes throughout the province to help achieve the following:

1. Community safety, restoration and protection;
2. Offender rehabilitation and reintegration;
3. Engaging victims in the justice process; and
4. Accountability to citizens and their concerns.

To achieve this, Cowper (2012) proposed the following:

1. Increased data collecting, research, education, training and evaluation for restorative justice; and
2. Increased funding for restorative justice programs to achieve their full potential.

Overall, Cowper's proposals for justice reform, in terms of restorative justice, correspond with Sharpe's touchstones of restorative justice.

The concluding chapter outlines recommendations for the development and advancement of restorative justice in British Columbia. Recommendations made in this paper will be informed by:

1. Sharp's touchstones of restorative justice;
2. The England and Wales' experience, particularly the 2010 Green Paper and Dr. Gavrielides' research;
3. The Nova Scotia experience, particularly the findings from the NSRJ; and
4. The 2012 Green Paper and Review in British Columbia.

## **6. Recommendations and Conclusions**

### **6.1. Recommendations for the future of restorative justice developments in British Columbia**

*The best thinking within our justice community offers improved protection for the community and justice for the accused, the victim and the community. It also addresses the prevention of crime and the restoration of offenders to fulfilling, valued lives. Knitting together the best proposals and models will result in a well-managed system that will effectively achieve both improved public safety and fairness, a system that will respond to the dynamic changes in criminal conduct and that will operate with transparency and accountability (Cowper, 2012, p.1).*

The following recommendations can serve as prospective considerations to the development and advancement of restorative justice programs and practices in British Columbia.

#### **1. Clear Definition, Mission, Vision and Values of Restorative Justice**

Defining restorative justice, along with a clear and operational mission and vision statement supported by a set of values, will establish the foundation for the overall process of developing and advancing restorative justice programs and practices in BC. This will enable policymakers to act on a clear operational framework in order to create policy that will aid rather than hinder the growth and development of restorative justice in British Columbia (Walgrave, 2001). Currently the operational definition of Restorative Justice in British Columbia, as defined by the Community Accountability Programs Information Package developed by the Ministry of Public Safety and Solicitor General's Office, states restorative justice (2004, p. 6-7):

1. Repairs harm caused by crime by restoring the relationships between all parties;
2. Holds individuals accountable for their behaviour;
3. Involves all parties affected by the crime (voluntarily);
4. Is guided by a fair and impartial facilitator (in aboriginal communities, this may be an elder);
5. Allows timely interventions, remedies, and consequences that satisfy people's desire to see justice being served; and
6. Be employed at the pre-charge, pre-sentence and post-sentence stages of the justice process.

This is compared to the definition of restorative justice in Nova Scotia from the NSRJ website which says restorative justice:

1. Addresses harm to relationships;
2. Offers an approach to accountability for harm, based on the restoration of equality in social relations and reparation to those who have suffered that harm;
3. Rooted in values of equality, mutual respect, and concern;
4. Uses deliberative processes involving all parties affected by the crime, guided by authorized and skilled facilitators; and
5. May be imbedded in communities of diverse character, while the state plays an important supervisory role in ensuring that community based restorative justice processes respect principles of due process, fairness, equality and the rule of law.

The British Columbia definition, while similar to the Nova Scotia needs to reflect the unique needs of British Columbia. Defining an operational definition of restorative justice is a crucial first step because it provides criteria for new programs and a yardstick by which to measure and evaluate current programs. A mission, vision and set of values also should be articulated and established for research and development purposes. A definition that aligns with Sharpe's five essential touchstones of restorative justice, along with a mission, vision and clear set of values can serve as a framework for restorative processes and the foundation of restorative justice process in BC.

## **2. Survey Area and Build Relationships**

After defining restorative justice, an important aspect of legitimating and advancing restorative processes is mapping the province for existing restorative justice programs. In part, this is to ensure there is no duplication of any services which create unnecessary competition for resources (Sharpe, 1998, p. 57). If there is no pre-existing

restorative justice program consultation should commence (Sharpe, 1998, p. 57). “The highest priorities for an initial consultation process would be the police, Crown, prosecutor’s office, and any large cultural groups within the community” (Sharpe, 1998, p. 57). Knowledge acquired from these justice authorities will be indispensable in developing and advancing restorative justice programs and practices. An example of this comes from the Nova Scotia experience. When the provincial government first expressed interest in developing restorative processes, groups already conducting similar processes were consulted and asked to adapt their practices to fit more restorative processes (Archibald & Llewellyn, 2006, p. 328). This ensured a more efficient development of restorative processes throughout the province. Currently in British Columbia there is a document of existing restorative justice programs, but it is limited in the information it contains, and it is not necessarily comprehensive. There needs to be a systematic mapping of restorative justice programs across the province.

The development of restorative processes in British Columbia requires creating and maintaining strong relationships of all kinds. Good working relationships between practitioners, researchers and policy makers can only serve to strengthen restorative processes as they progress (Gavrielides, 2012, p. 19). Each group has extensive knowledge, which can serve to inform the others and create the most informed restorative processes possible. Consultation with organizations within the community is also vital when developing a restorative justice process. This does not need to be an overly formal task, simply talking to local organizations and getting their ideas, views, opinions and gleaning off their experience in the area with regards to crime and justice (Sharpe, 1998, p. 57). “A strong restorative justice program strengthens its community base, and its work for restorative justice, through: broad community involvement; a habit of wide consultation; collaborative relationships; a philosophical anchor, solid operating structure; specific program standards”(Sharpe, 1998, p. 53). Talking with community members on a semi-regular basis is essential for maintaining a sense of the specific concerns and priorities people have about justice issues. It is also a way to stimulate thought and discussion about the community’s role in responding to criminal harms.

As partners, providers and advocates, voluntary and community sector organizations are ideally placed to work with local authorities to achieve

results for local people-improving the quality of life and the quality of services in every area and encouraging strong and cohesive local communities...Funders and other stakeholders should see the voluntary and community sector as a key partner for restoring justice in the community (Gavrielides, 2007, p.264).

Another crucial collaboration is with agencies that are already working with offenders, victims and their families; given their expertise and knowledge of the way the justice system operates. Other partnerships that are important for the success of a restorative justice program include: prospective funders; advocates; and the criminal justice system, which includes police departments, social services, correctional services, lawyers and judges (Sharpe, 1998, p. 54). Again, every situation is different and the partnerships cultivated in one community can look very different than another (Sharpe, 1998, p. 54). There is no set blueprint, yet, clear standards and guidelines are necessary for restorative justice to be responsive and receptive to individual and community needs (see Braithwaite, 2002). A partnership between the traditional criminal justice system and restorative justice needs to take into account each community's situation, available resources and distinct needs in particular, which will determine how justice is delivered (Sharpe, 1998, p. 48). The workers in the restorative justice process should continuously check back with these partnerships as the program progresses to find out how the program is seen and understood from a variety of perspectives (Sharpe, 1998, p. 56). Continuing consultation in this area also respects the fact that the formal justice system remains responsible for criminal justice in the community. The formal system may share that responsibility with a restorative justice program, but justice officials-especially those most closely connected with the programs work-need to feel confident they are being kept informed about a program's work and ideas for changing it (Sharpe, 1998, p. 60).

Example: An example of successful community-government partnership is the Nova Scotia Restorative Justice Program:

The NSRJP is a partnership between government and community...In this role government ensures an adequate legal framework consistent operational standards and ongoing monitoring of implementation. Community agencies are, however, responsible for animating and



operationalizing the Program through their delivery of it within specific communities (NSRJ-CURA Website).

British Columbia can look to the Nova Scotia Restorative Justice program as an example for creating an effective method for a partnership between government and community. While the prospective lessons learned from the Nova Scotia illustration can serve to inform the British Columbia situation, British Columbia has a different demographic make-up, economy, along with a range of other social indicators. British Columbia also has its own distinctive history in the development of restorative justice that dates back over two decades. There are also a large and diverse range of First Nations groups, along with diverse immigrant communities with both new and old roots in the province. Therefore great care must be taken during the consultation process ensuring each group is given a voice and feels included. Also because of these unique communities, the lessons learned from Nova Scotia should not simply be replicated and applied to the British Columbia context.

### **3. Program foundation**

An essential component of any restorative justice program is a firm foundation rooted in a mission statement based on the program's vision, mission and values, to lay the necessary groundwork for a successful implementation process. Sharpe (1998) states that a solid base to develop a program requires four basic decisions. Program creators should answer these fundamental questions to simplify many other decisions and aid in the program's long-term success. These decisions include:

1. Where should responsibility for such a program lie?
2. How should this kind of work be funded?
3. Why does this program exist and?
4. What is required for the program to succeed?

An example of an established program, with a foundation grounded in a mission statement, vision and values is IARS. IARS's mission is providing "everyone a chance to forge a safer, fairer and more inclusive society", and their founding principle is "individual empowerment" (IARS, 2012). Also, the four decisions mentioned previously can be answered by the Core Business Model of IARS. According to the IARS Core Business model this program exists and succeeds:

1. By building the appropriate organisational capacity;
2. By being authoritative, independent and evidence-based voice on current social policy matters;
3. By supporting the individual (with an emphasis on young people to carry out their own initiatives to shape decision-making);
4. By giving everyone a chance to forge a safer, fairer and more inclusive society;
5. By acting as a network that brings people and ideas together, communicates best practice and encourages debates on current social policy matters; and
6. By carrying out action research that is independent, credible, focused and current.

Programs in British Columbia can learn from the IARS example; in that it is a community led and born NGO, grounded in their mission, vision and values and are able to answer the four essential questions for building a strong foundation. They build their own evidence base, and lead the way in policy reform. They also publish an annual impact report, which enables them to track their own development in terms of the organizational strategic indicators. A restorative justice program that is firmly entrenched in values can also use these values as a guideline for research and development. Boyes-Watson and Pranis (2012) state that evidence-based practices should be used in partnership with other wisdom and values that come from our communities to lay the groundwork for restorative processes. This will ensure these processes are fully accountable to the needs of each participant involved.

#### **4. Case Management**

Case management involves answering the following questions (Sharpe, 1998, p. 81 & 84):

1. What cases the program will be willing to take?
2. What is the type of restorative justice processes that will be utilized?
3. What restorative justice practices are used?
4. What are the methods and techniques that will be used when prepping cases?
5. How will the follow up work for each case?
6. What the arrangements are for following up after agreements are reached and what to do in the cases of unique circumstances?

The answers to these questions will be dependent on how restorative processes will fit in to the existing justice system and what the overall goals of the justice system are.

Again, the answers to these questions should fit the unique needs of British Columbia and what is already taking place throughout the province.

An example of an established program in British Columbia that has answered these questions is the Community Youth Justice Program under the Communities Embracing Restorative Action Program in Coquitlam, BC. Cases the program takes include youth under the age of 18 referred by the investigating police officer or Crown who have been accused of committing a criminal offense. Typical offences referred to the program include “theft, possession of stolen property; mischief, break and enter, assault, robbery, taking a motor vehicle without consent, etc” (CERA, 2012). The type of restorative process/practices utilized is a resolution conference which is a “meeting in which two co-facilitators involve the accused youth, the person(s) harmed, their families and supporters in a circle-shaped forum” (CERA, 2012). The facilitators assess the suitability of all participants before proceeding with the conference, the accused must accept responsibility for the offense committed and the victim must participate voluntarily before the restorative justice processes can commence. After the process, the accused is diverted from the criminal justice system with no criminal record. If the youth fails to complete the agreement the file is marked incomplete and closed by CERA and is then sent to the referencing agency for suitable action (CERA, 2012). CERA is a good example of a restorative justice program demonstrating the thorough and comprehensive work currently occurring throughout British Columbia.

## **5. Staffing and Professional Development**

The decision to staff a restorative justice program with paid staff, volunteers, or an amalgamation of both can be difficult (and may often be partially dependent on available funding and dispersion of available resources) (Sharpe, 1998, p. 85). It is also imperative to outline duties for paid staff and volunteers (if your program is to have both) and how much training volunteers are to receive (Sharpe, 1998, p. 85). Volunteers are a necessary component of any restorative justice program, particularly for community engagement and reducing costs. “Restorative justice was reborn not out of formal

structures and legislation, but of voluntary action by enthusiastic and dedicated practitioners from around the world” (Gavrielides, 2011, p. 10). Volunteers have the potential to play a significant role in the awareness and advancement of restorative justice.

Sharpe (1998) also believes it is important for restorative justice program creators to clearly show they value professional development of their staff, particularly with regards to education, training and reflection (Sharpe, 1998, p. 86). Programs should make a commitment to increase their knowledge of restorative justice and new trends, learn and practice skills needed for the program, and reflect upon the skills needed to properly execute the restorative process (Sharpe, 1998, p. 86-89). This commitment is clearly outlined in the research mandate of the NSRJ-CURA partnership.

...the NSRJ-CURA will contribute significantly to strengthening and developing the existing Nova Scotia Restorative Justice Program. It will provide new knowledge about restorative justice theory and practice to system actors, policy makers, and decision makers. It will also afford an opportunity for significant skills development and training for those actively engaged in the provision of services within NSRJ (NSRJ-CURA, 2012).

This is another example of the benefits restorative justice processes in British Columbia can gain through developing effective partnerships, specifically research partnerships with universities. The Centre for Restorative Justice at Simon Fraser University serves as a catalyst for community-university relations. The Centre for Restorative Justice is “dedicated to promoting the values and principles of restorative justice through education, research, and dialogue with academics, practitioners, and community” (Centre for Restorative Justice Website, 2012). This Centre is a considerable resource in British Columbia that when fully utilized, can significantly aid in community-university research and development, and evaluation of restorative justice processes.

## **6. Public Relations**

‘Public relations’ is a key element in the public awareness and advancement of restorative justice. Essentially it’s the effort and resources a program puts into developing a relationship with the surrounding community. Some of the things to consider here are (Sharpe, 1998, p. 93).

1. Program visibility;
2. Public education;
3. Political advocacy; and
4. Involving community members.

The media can play a key role; informing the public on what restorative processes are and what they can achieve. Practitioners in a UK study had this to say (as cited in Gavrielides, 2007, p. 263):

The community as a whole knows very little, or nothing at all, about RJ's alternatives. Therefore, more information needs to be disseminated. Some respondents suggested using the media (television, radio, newspapers etc) to enhance RJ's profile. Some insisted on using examples of real life to show the real positive outcomes that RJ has on victims and offenders' lives. In their words, RJ has the inner ability to be able to speak to the hearts of people, and this can be achieved by presenting real case-studies that have been processed restoratively.

For restorative processes to be established as a viable option in the justice process people must be aware of what restorative justice is and what it has to offer. This is particularly important in British Columbia as there are numerous inspiring stories in existence from local community based restorative justice programs that could be used to inform the public. In addition, public consultation of bigger picture justice issues is required. For example, communities should be asked what kind of justice system do we want to create and why? This may help communities arrive at solutions for justice that go beyond punishment and incarceration that will protect the public and provide a 'better' justice.

## **7. Protecting the public and providing a 'better' justice**

A restorative justice program, especially in its initial stages, needs to establish a good reputation to instill confidence. Restorative justice programs need to go above and beyond to prove to the public a better justice can be served and the media is an integral component. Claims that restorative justice is cheaper must be balanced against the scant available data. Restorative justice has to convince on two fronts. First, it must show that it provides better justice for the parties involved. Second, that while doing so, it places public protection at the heart of its practices. High profile cases highlighting

failures and the exposition of victims and communities to re-victimisation will quickly result in investment decrease (Gavrielides, 2012, p. 16).

Protecting the public and providing a 'better' justice can be done through the following ways:

1. Community engagement and citizenship;
2. Accountability and transparency;
3. Flexibility for unique communities;
4. Sufficient funding; and
5. Maintaining the philosophy of restorative justice.

Each of these points needs to be addressed by the government of British Columbia before advancing restorative justice processes further. Each point is discussed and examined further in the following sections.

#### *1 .Community Engagement/Citizenship*

*"A citizen is one who produces the future, someone who does not wait, beg, or dream for the future" (Block, 2008, p. 63).*

For restorative justice processes to flourish in BC it is imperative that individuals are not apathetic, but instead are encouraged to engage as citizens and become responsible for the well being of the community. Elliott (2011) states that the general public have generally become more passive as Western societies have become more professionalized. When conflicts arise outside our personal domain, and professional help from institutions are sought, barriers arise even if we did want a say in our own problems (p. 202). Block (2008) highlights the importance of the movement from "centrism and individualism to pluralism and interdependent communalism" (p. 54)

This shift has important consequences for our communities. It offers to return politics to public service and restore our trust in leadership. It moves us from having faith in professionals and those in positions of authority to having faith in our neighbours. It takes us into a context of hospitality, wherein we welcome strangers rather than believing we need to protect ourselves from them. It changes our mindset from valuing what is efficient to valuing the importance of belonging. It helps us to leave behind our penchant for seeing our disconnectedness as an inevitable consequence of

modern life and moves us toward accountability and citizenship (Block, 2008, p. 54).

Activism is an imperative component of citizenship. A citizen is one who is willing to do the following (Block, 2008, p. 65):

1. Hold oneself accountable for the well-being of the larger collective of which we are a part;
2. Choose to own and exercise power rather than defer or delegate it to others;
3. Enter into a collective possibility that gives hospitable and restorative community its own sense of being;
4. Acknowledge that community grows out of the possibility of citizens. Community is built not by specialized expertise, or great leadership, or improved services; it is built by great citizens; and
5. Attend to the gifts and capacities of all others, and act to bring the gifts of those on the margin into the center.

Braithwaite (1996) says we can aim for a society where rights and responsibilities are strong, and strong individuals and strong communities are nurtured. Facilitating the use of restorative justice processes will require community resources and support especially knowledgeable, committed citizen volunteers” (Moore, 2007, p. 186). For restorative justice to reach its full potential in British Columbia, the community needs to be willing to step up and actively participate in the process (Sharpe, 1998, p. 45). “...the mainstream justice system can support community programs in ways that advance the work of restorative justice and encourage community ownership of it” (Sharpe, 1998, p. 45). Communities can effectively aid in the justice process through admitting to the problems in their community and developing ways to deal with them (Sharpe, 1998, p. 47).

British Columbia is unique in that many communities have taken the initiative to create restorative justice programs; as non government organizations (Elliott, 2011, p. 204). Braithwaite (2002) states that NGOs are an excellent opportunity for community members to participate in justice matters instead of completely relying on government officials (p. 133). “Depending on how well resourced they are, NGOs can also play a role in responding to invitations from less powerful or less articulate citizens for support in restorative circles” (Braithwaite, 2002, p. 259). Hence, NGO’s make “citizen participation in a democracy” possible (Braithwaite, 2002, p. 133), particularly citizens

that aren't normally heard in the criminal justice system such as victims and the community. The Provincial Government should view the current community-based restorative justice programs as an asset and encourage their ongoing attempts to engage community. In his review of the 2012 Green Paper in BC, Cowper (2012) acknowledges the valuable resources in British Columbia's communities. Cowper (2012) states:

...a fully functioning criminal justice system must acknowledge that some of its necessary resources reside in the general community. Many features of the social dimension of both the detection and proof of crime, as well as its reduction and the reintegration of offenders, depend on effective work with and within the community (p. 48).

England and Wales provides an example where community engagement has been highlighted as imperative and central in the justice reform movement. Gavrielides (2011) recaps answers from a survey completed by practitioners of restorative justice in England. Practitioners acknowledge that top-down approaches will fail. Restorative justice is community based; therefore practitioners should be allowed to assist in devising qualifications (p. 5). In addition to this, The Green Paper (2010) emphasizes community involvement and awareness through:

1. Attendance at police beat meetings;
2. Involvement through regular local consultative or other criminal justice partnership events; and
3. Increased formal volunteering opportunities.

The commitment to engaging community in the justice process presented above necessitates the utilization of restorative justice processes in British Columbia that will enrich and enliven community members through increased involvement and accountability of the justice system.

## *2. Accountability/Transparency*

*A modern criminal justice system has to address and meet the demands of the public to have their concerns taken into account. These concerns must be transparently reflected in the management of our justice institutions" (Cowper, 2012, p. 48).*



In Cowper's (2012) review he stressed overall accountability and transparency of the justice system to the general public: "A 21<sup>st</sup> century criminal justice system will be accountable and transparent in meeting public's expectations on all those measures critical to its performance of the public interest in justice" (Cowper, 2012, p. 48). This can be done through monitoring and collecting data on the ongoing performance of the justice system and producing the results for the public (Cowper, 2012, p. 51). Cowper (2012) also stresses offender accountability through restorative justice processes in particular (p. 131).

The expanding use of restorative justice programs offers a means outside the traditional court processes by which victims can voluntarily seek accountability by the offender through a process that focuses on the future and achieves reconciliation in a fashion chosen by the participants.

The 2010 Green Paper in England and Wales also emphasizes accountability and transparency through such measures as (Ministry of Justice, 2010):

1. Providing improved information to the general public;
2. Promoting opportunities for public involvement (e.g. Neighbourhood Justice Panels);
  - a. Through consultation about local concerns and action to address them and;
  - b. Through volunteering.
3. Making sentencing clearer;
4. Simplifying the way offending rates are measured;
5. Increasing local accountability for delivering services; and
6. Shifting accountability from central government to local areas.

Accountability and transparency are vital aspects of the justice reform. Restorative justice processes have the potential to provide these values as they are key standards in the definition of restorative justice in each country.

### 3. *Unique Communities*

*"Restorative programs that authentically reflect the diversity and unique needs of communities are congruent with the basic principles of restorative justice" (Moore, 2007, p. 182).*

It is essential that restorative processes be flexible and adapt to the unique needs of the various communities it is providing service for. From the Nova Scotia experience, it is apparent that having community members from each community (e.g. the Afro-Canadian community) volunteer or be part of the paid staff is vital to the acceptance and success of the restorative process. In the British Columbia context, for example, it is essential that the needs of the First Nations communities are attended to respectfully and in a manner fitting of their key role in the development of restorative justice processes in the province. Other potential groups to consider include new immigrant families, specifically from South Asia. These groups are often vulnerable due to vast language and cultural differences and may have unique needs and requirements with regards to the criminal justice process. As previously mentioned, the needs of each community can be ascertained through proper consultation and collaboration. It is imperative that each community believe their voice has been heard, understood and utilized throughout the development and implementation process. Also, continuous collaboration with these communities will ensure the processes stay true to the needs each group requires and the values it has articulated.

#### *4. Funding*

For restorative justice processes to reach their full potential in British Columbia, increased funding should be a priority. Indeed in his review, Cowper (2012) mentions this as one of his recommendations (p. 151):

Expanded funding for restorative justice programs should be made available and innovative methods of funding should be assessed, such as funding referrals, in cases where the offender would otherwise be subject to a significant criminal penalty.

The increased funding for restorative justice processes in British Columbia can be used to fund further research and comprehensive evaluations of restorative justice processes. Additional funding should also be allocated for ascertaining the cost-effectiveness of restorative justice processes. A British Columbia example of a program that conducted a cost-benefit analysis research project is the Chilliwack Restorative Justice and Youth Diversion Association. Research conducted in 2001 by this organization determined the

average time a first-time young offender who pleads guilty spends in the traditional justice system is 34.5 hours and only 12.45 hours in the restorative justice process. The cost savings calculated was an estimated \$2,649.50 per young offender (Dhami & Joy, 2007, p. 19). Further research is required on programs throughout British Columbia, including programs that deal with adult offenders involved with more serious crime. However, as Gavrielides (2011) warns while determining potential cost savings, the values of restorative justice need to be maintained.

In British Columbia, there is a range of funding levels. Most community based restorative justice programs receive their funding from local government for referrals largely received from police and the general public. If accepting Crown referrals becomes a focus for restorative justice programs in BC, adequate training and funding must follow.

As previously mentioned, the Nova Scotia Restorative Justice Program receives 1.5 million dollars per year from the Provincial Government (Archibald & Llewellyn, 2006, p. 298). Securing sufficient funding ensures restorative justice processes in Nova Scotia are informed by thorough research, continued training for volunteers and staff, comprehensive evaluations etc; all ingredients needed for successful restorative processes in BC. More recently, Nova Scotia has committed \$500K to restorative justice to address bullying and victimization in school. While this funding is coming from the Ministry of Education it could reduce the long term burden on the justice system, given that bullying behavior in school is highly correlated with subsequent delinquency and criminal behavior (Morrison, 2006).

##### *5. Philosophy of RJ should not be compromised*

As a note of caution for program creators; maintaining restorative values is not a straightforward matter. Gavrielides (2012) states that avoiding the “watering down” of principles to fit funding restrictions is imperative to preserving the value of restorative justice is imperative; (p. 19). Sharpe (1998) suggests that a program’s standards should reflect the communities’ priorities for justice, the program’s scope and level of expertise, and the resources available for operating the program (p. 73). Continually testing

restorative justice programs against its intended values is the best way to ensure the program is operating properly (Sharpe, 1998, p. 49).

A restorative justice program is faithful to its purpose when it (Sharpe, 1998, p. 49):

1. Holds victim involvement as central;
2. Ensures preparation and safety for all participants;
3. Facilitates dialogue among the persons involved;
4. Strives for reintegration along with accountability;
5. Ensures adequate resources for reparation and reintegration; and
6. Addresses systemic pressures toward crime.

## **8. Evaluative component**

Evaluation should be a key component built in to restorative justice processes. Gavrielides (2012) mentions “robust evaluation” as one of his key findings for implementing restorative justice processes for street violence. Robust evaluation should (Gavrielides, 2012, p. 19):

1. Be in-built;
2. Include outcomes, processes and other targets; and
3. Disengage with media and political agendas.

In his review on the 2012 Green Paper, Cowper (2012) also stresses the need for clarity in the justice system which requires (p. 2):

1. Clear and accepted goals;
2. Disciplined execution and; and
3. Clear performance measures that are monitored and evaluated.

Cowper (2012) also recommends the use of evaluations for participants of the justice system to ensure ongoing improvements can be made to the justice reform initiatives to achieve the desired outcomes (p. 79).

Restorative justice processes in BC have been cultivated and advanced through practice. Because of this the restorative processes in BC generally needs to be “informed by sound theory” (Doolin, 2007, p. 428). Research should be conducted to ascertain what is needed in British Columbia to aid in the implementation of new restorative justice programs and further development of existing ones. Once these

programs are implemented, evaluation needs to be a key focus. Evaluating restorative justice in B.C. is also important for the following reasons:

1. Growth of research and development;
2. Other evaluations have generally been quite small and limiting;
3. Public knowledge regarding restorative justice and its potential must be increased;
4. Cost savings for the government and subsequently the general Canadian public must be determined; and
5. Possible benefits for participants must be substantiated.

A small number of evaluation methods and tools have been utilized in British Columbia. For example, the Lillooet Restorative Justice Program hands out evaluation questionnaires at the end of the process to all participants. Another example, while not particularly designed for BC, is still applicable and can be used to evaluate existing programs, is provided by Shannon Moore who developed a toolkit for restorative justice stakeholders to use in school and community-based programs and/or justice contexts based particularly on rights-based restorative justice. These two evaluation methods should be used as reference points for continued evaluation of restorative processes in BC.

The following proposed survey questions were developed during the author's practicum at the BC Ministry of Public Safety and Solicitor General, with the help of her supervisor, Catherine Barga, the Restorative Justice Coordinator for British Columbia. The survey will help to clarify the overall picture of current restorative processes in BC particularly, by determining, describing and breaking down what restorative justice advocates are claiming, what is actually happening and what needs to happen for restorative justice to advance in British Columbia. This outline, an imperative first step towards research and development of restorative justice in British Columbia, will serve as a functional tool that will lay the foundation for future research.

The answers to the following questions can build a strategy for further restorative justice development in BC:

1. What is restorative justice claiming to do in B.C.?
2. Is restorative justice doing what it claims to be doing in B.C.?
3. Is restorative justice meeting the needs of the people it serves in B.C.?

Research Goals:

1. What resources do restorative justice programs need to run well?
2. What are the characteristics of the most effective models of restorative justice?
3. What are the benefits of restorative justice?
4. How cost effective is RJ?
5. What impact does restorative justice have on offenders and victims?
6. Can RJ alleviate back-log in the court system?
7. Are agreements more often compiled with in a restorative justice process versus the court process?
8. Which offender characteristics are most associated with restorative justice effectiveness?
9. What types of crime work best with restorative justice?
10. What level of community involvement produces the best outcome?
11. Can restorative justice play an effective role at all levels of the justice system?
12. What are the obstacles preventing public and political support of restorative justice?
13. When is the best time to intervene and employ a restorative justice process?

Instrument: Survey

Sample: Victims/offenders who have completed the restorative justice conference process.

Questions:

1. Was the program well run?
2. Did you benefit? How?
3. Do you think your victim/offender benefited? How?
4. As far as you know, was the agreement complied with?
5. Was the outcome satisfactory for you?
6. Explain your role in the process.
7. What was the impact of the conference in your view?
8. What was the most important part of the process for you?
9. Rate your satisfaction with:
  - a. Process
  - b. Preparation
  - c. Information provided
  - d. Conference organization
  - e. Offender Response

Instrument: Interviews/Survey

Sample: Program Staff including the Board, Practitioners, and Volunteers

Questions:

1. Was the agreement complied with?
2. Did the offender re-offend? And if so, what was the offence?
3. What was the cost per conference?
4. What was the model used?
5. What types of crime types does RJ work best for?
6. What types and how much community involvement are needed?

Restorative processes have potential to alleviate many of the issues indicated in the 2012 Green Paper. The above survey, if administered by all programs providing restorative justice throughout British Columbia would produce valuable data for the advancement of future restorative processes. This data combined with the execution of the fore mentioned recommendations, would then assist the Provincial Government; providing the basis for the improvement of restorative justice processes in BC.

## 6.2. Conclusion

Restorative justice has significant potential enhance British Columbia's justice system; given the provincial government's renewed dedication to justice reform. What is apparent for the success of restorative measures in BC are three key ideas:

1. Community engagement;
2. Accountability and transparency; and
3. Research and development is essential.

Each of these concepts are represented and emphasized in each of the case studies presented in this paper and perceived as crucial aspects of justice reform in general and restorative justice development and advancement in British Columbia in particular.

### *Community Engagement*

*The adoption of restorative justice is more than just the installation of a program or technique: the adoption of restorative justice moves organizations towards more communitarian values. It is a project of profound change which requires sustained leadership to invent new organizational infrastructures which brings different sets of participants together to talk in different ways about different things. More than anything else, this process requires personal commitment, not only from above but at all levels of organization. People must, at some level, choose restorative justice for themselves (Boyes-Watson, 2006, p. 366).*

In each case study presented in this paper, importance of community came up in various ways. Communities are prioritized in the restorative process because they are seen as direct or indirect victims of crime, along with being accountable stakeholders with regards to maintaining social norms in the community (Boyes-Watson, 2005, p. 401). Community engagement is a vital aspect of restorative justice; however, as Boyes-Watson (2006) reminds us, many modern societies are plagued with individuals who have a little concern for others (p. 363). This apathetic nature threatens the formation of communities outside our traditional geographical sense of traditional communities, as quite often personal connectedness does not exist amongst individuals who merely live near one another (Boyes-Watson, 2006, p. 362). Boyes-Watson (2006) defines community as “a particular type of social bond characterized by a sense of mutuality, care, connection, identity, awareness and obligation to others. This bond, in turn, motivates certain relationships (p. 362). Restorative justice processes seek to motivate individuals to make these connections through direct involvement in the justice process (e.g. volunteering) through fostering relationships that motivate individuals to take responsibility for one another. “It is simultaneously a process that is rooted in community and one that strengthens community (Boyes-Watson, 2006, p. 372). However, restorative justice cannot achieve this objective alone. “Participation by volunteers in the criminal justice system is not simply a function of free-floating civic pride of citizens, but the result of a deliberate set of policy decisions by the criminal justice system” (Boyes-Watson, 2005, p. 402).

British Columbia has a rich history of community involvement in restorative justice processes. Community engagement can be furthered and expanded even more throughout the province through a commitment to increase the efforts of current community-based restorative justice programs and expand into other communities. British Columbia can look to England and Wales as prioritizing community engagement for justice reform, through restorative processes, is emphasized in England and Wales in the creation of IARS and the 2010 Green Paper (E.g. Youth Offending Teams and Neighbourhood Justice Panels). For example, IARS is a community-based organization dedicated to strengthening community by encouraging their active participation in “social problem solving” for a safer, more inclusive society (IARS Website); as an example of an



organization that encourages community participation, particularly with regards to youth involvement (IARS Website). To create safer, more involved communities in British Columbia, youth need to become engaged in researching and developing restorative justice processes.

The 2010 Green Paper stresses the importance of community involvement through increased volunteering (Ministry of Justice, 2010, p. 76). Currently, there are approximately 10,000 volunteers working with youth in the criminal justice system and the Green Paper wishes to increase this number and encourage voluntary and community sector providers to deliver more services, where appropriate (Ministry of Justice, 2010, p. 76). Another way the Green Paper proposes to increase community engagement is through the use of Neighbourhood Justice Panels. Neighbourhood Justice Panels will provide a type of restorative justice that involves criminal justice professionals and local volunteers deciding together to make decisions on what actions should be taken to deal with specific types of minor crimes (Ministry of Justice, 2010, p. 81). Recently, Sir Charles Pollard and his NGO, Restoratives Solutions, along with the UKs National Offender Management Service, was charged with implementing Neighbourhood Justice Panels in 100 communities. It is interesting to note that, Sir Charles Pollard, a notable restorative justice pioneer from England, contacted Dr. Brenda Morrison, a Professor at Simon Fraser University in British Columbia, as to how volunteers are utilized in the delivery of restorative justice in British Columbia. Sir Pollard wanted to gain a fresh perspective on community engagement, through the use of volunteers from the British Columbia experience; as that is an area BC has excelled in. Evidently, there is an opportunity for reciprocal learning between the England and British Columbia. Recently, the decision to further engage communities through policy and provide adequate resources for communities can be seen in British Columbia in the 2012 Review of the justice reform Green Paper in British Columbia.

Put simply, the criminal justice system includes more than the Ministry of Justice. Any systemic analysis must include non-governmental participants. A full and rational plan for the justice system, in order for it to achieve its identifiable goals, must include providing sufficient resources for community-based resources” (Cowper, 2012, p. 82).

Utilizing and engaging community is imperative to the success of advancing restorative processes in British Columbia, as well as increasing accountability and transparency in the justice system.

### *Accountability and Transparency*

Overall, the general public deserves to know what is happening in the justice system. Governments have a responsibility to deliver accurate data to the public about the dealings of the justice system. Accountability and transparency of the criminal justice system has been a theme throughout each case study presented in this paper. Restorative justice promotes accountability in their processes. “The importation of restorative justice practices into criminal justice, social services and other public agencies also increases accountability for organizational decision makers” (Boyes-Watson, 2006, p. 370). There are two main aspects of accountability in the context of restorative justice including offender accountability and accountability of the restorative process to the participants.

Accountability and transparency in the justice process are two key themes in the 2010 Green Paper in England and Wales. An example of increased accountability and transparency that the British Columbia experience could learn from is the monitoring recommendation for Youth Offending Teams in the 2010 Green Paper in England and Wales. Accountability and transparency will be increased through the encouragement of partnerships between local authorities, YOTs and other children’s services. This will increase accountability of each separate institution to one another and improved transparency through information sharing (Ministry of Justice, 2010, p. 76). Local accountability and transparency will also be increased through the dissemination of data collected from YOTs on the effectiveness of their processes. This mandate is not specific to YOTs; the Green Paper recommends better distribution of information to the community by all criminal justice services in their localities, and the encouragement of these services to allow communities to communicate how crime has affected them (Ministry of Justice, 2010, p. 81). This information will be useful in determining local concerns and priorities (Ministry of Justice, 2010, p. 76). Distributing information is also emphasised in the British Columbia experience.

In his review of the 2012 Green Paper Cowper (2012) cites the importance of meeting the demands of the British Columbia public by having their concerns inform and be “transparently reflected” in how the justice institutions are managed (p. 48). Cowper (2012) also emphasizes the significance of evaluations and reporting the results of evaluations to the public to further increase accountability and transparency of the justice system and restorative justice approaches. “Not only would open and transparent evaluations and reporting assist in building a common understanding of justice system goals, it would also improve the public’s confidence that needs in the justice system are being addressed” (Cowper, 2012, p. 79-80). Cowper (2012) goes one step further and states that the results of the evaluations should be made public to further ensure accountability and transparency of the justice system (p. 51). Cowper (2012) also emphasizes the importance of offender accountability through restorative justice processes (p. 51). Finally, Cowper (2012) mentions evaluations are needed for the development of restorative justice programs specifically (p. 93). This feeds into the final concept imperative for advancing restorative processes in British Columbia, research and development.

### *Research and Development*

Based on the evidence to date, there has been no consistent support to engage in praxis, particularly in praxis that engages community-and state-based policy, programs and practice in British Columbia. (Morrison & Pawlychka 2012 p. 369) state:

There is no good reason, other than political will, that the practice of restorative justice should remain relegated to a marginal normative theory when restorative justice’s theoretical roots span both normative and explanatory theory and when there are community groups willing to engage in research and development; that is, in praxis.

Restorative justice needs to be taken to the next level in British Columbia or it will remain marginalized. Research should become a priority so the results can lead a more evidence-based and streamlined movement. This will increase the confidence of government officials, advocates, scholars, practitioners, victims, offenders and communities in the ability of restorative programs to introduce healing into the criminal justice system.

Research and development needs to be prioritized in British Columbia. Examples of where research and development are priorities come from the Nova Scotia, and the England and Wales experience. As mentioned previously, the members of IARS believe thorough research and development of justice processes is imperative to creating safe, more engaged communities that have the ability to aid in the justice process (IARS, 2012). Rigorous research on restorative justice processes is exemplified in Nova Scotia by the NSRJ-CURA research partnership. This research partnership provides invaluable data about restorative justice theory and practice to various individuals including decision makers, system actors and policy makers (NSRJ-CURA, 2012). This partnership also provides universities the opportunity to engage students through learning and training; this will enable students to aid in the development and operation of restorative justice in multiple ways, including further research of restorative justice and restorative justice practitioners (NSRJ-CURA, 2012). Engaging university students in British Columbia for research purposes needs to be improved, and the Nova Scotia experience provides a good example of how this can be achieved.

The current provincial government's proposed need for justice reform includes research and development as an obligatory step. In his review of the 2012 Green Paper, Cowper makes reference to research and development on several instances in his recommendations for justice reform and the progression of restorative justice approaches. For example, Cowper (2012) states "focused reporting and evaluation, is critical to the disciplined development" of restorative approaches (p. 91). Cowper (2012) also recommends a provincial plan for restorative justice that includes "education, quality assurance and control, performance measures, reporting and evaluation" (p. 93). These recommendations are a good starting point for enhancing restorative processes throughout British Columbia.

Utilizing and engaging strong communities, enhancing accountability and transparency, and increasing research and development throughout the province are critical steps to the progression of justice reform generally and restorative justice processes specifically in British Columbia. Each of these three central themes that emerged from this comparative analysis provides British Columbia with prospective

lessons for the advancement and development of restorative justice. British Columbia is in a position to develop and expand upon existing restorative justice initiatives, and create new and innovative processes, based on British Columbia's specific needs.

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