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RESTORATIVE JUSTICE: RESTORING JUSTICE IN SASKATCHEWAN

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INTRODUCTION

“Restorative justice” is a term the Commission heard repeatedly in its dialogues around the province. Often referred to as necessary for justice reform, “restorative justice” has been defined in many ways. It involves the principles of repairing harm, healing, restoring relationships, accountability, community involvement and community ownership. The Law Commission of Canada calls this approach relationship-based. It reflects *opintowin*, Cree for “lifting each other up.”

The values that are in restorative justice are there more in terms of empathy, information sharing, problem solving. It's designed to restore people to the community. It's built around principles such as involvement of all parties, a sense of healing and accountability. It unites what's been divided, and strengthens the community.

What ultimately restorative justice is about is respecting people.

Restorative justice is an alternative forum to dispute resolution; restoring relationships.

What is restorative justice? We talked about fairness and about restoring or building harmony that included or involved community and, for lack of better words, victim and offender. So it would be a much more inclusive process. And it was a process that was future-focused on the healing and the building versus focused on the past mistakes.

**And it hopefully provides an opportunity to look at every situation and every individual separately and to do what's best in that particular circumstance; it has lots of flexibility.
(Participants at the Restorative Justice Roundtable)**

The Commission believes these principles must be the basis for working towards a healthy, just, prosperous and safe Saskatchewan. To achieve this we will need self-determination for the individual, family and community. The work must involve an integrated, co-operative and truly Saskatchewan approach to return justice to the community.

Justice to Aboriginal people has always been the preservation, the restoration of the primary imbalance within the lives of people. Justice has not been individualistic; justice has been for the collective whole.



Sanctions have been used within Aboriginal communities, that is true, but that has been to maintain a balance and to maintain the harmony to bring it back. Sanctions are used within the Euro-Canadian system to punish, to get even. As an educator I have never known an instance where I was able to teach anyone anything by punishing him. You teach by reaching out and becoming a part of what they are doing. You engage them in the process. (Speaker, North Battleford Community Dialogue)

The principles of restorative justice contrast with the practices of the formal criminal justice system. This contrast reveals the differences between the worldviews of First Nations and Metis people and the dominant society.

The current justice system is not trusted or respected by many First Nations people because First Nations have had no say in its creation, no say in the development of policies or laws. First Nations have had to endure attitudes of the practitioners and more than any other group of people we are disproportionately affected by the system.

In terms of values, the use of the adversarial approach to resolving differences in the justice system creates winners and losers. This approach clashes with the concepts of First Nations justice which emphasizes the restoration of social harmony in the community. Social harmony requires the building and maintaining of strong family and community relationships. (Speaker, FSIN Health & Social Development Presentation)

I wanted to talk about how we arrived into the provincial justice system because we're only about 108 years old and we're in a mess already. And justice in Indian country is respect, that's what justice is, but we don't know how to say it in our language, all we can say is justice. If we go back to our languages and try and find out what justice means, if you're Saulteaux or Cree, maybe you'll understand what justice is; it's respect for each other. Justice is not to get even, you know, he took my candy and I'll break your arm; it's not justice. You learn justice already in Indian justice, you learn it at home and you learn it in the community. Everybody provides justice. A lot of respect and compassion for each other, justice. It isn't calling the police because you did something. That's not justice to me. So I think what I would like to find out in everybody's mind, what is justice to you? What do you feel justice is? We're so ingrained with justice, calling the cops, having a lawyer involved, having a judge involved. To me that's not justice. (Speaker, Cowesses Community Dialogue)



Justice delivery in Saskatchewan has relied heavily on punishment. First Nations and Metis people are not alone in their criticism of it. This adversarial pattern is often seen, according to the Law Commission of Canada, as being “too long, too costly, too complex, too punitive, and inaccessible or unresponsive to communities’ concerns.” Restorative justice, on the other hand, “refers to a process for resolving crime and conflicts, one that focuses on redressing the harm to the victims, holding offenders accountable for their actions and engaging the community in a conflict resolution process.” (Law Commission of Canada, 2003)

Further, North American studies show that harsher penalties do not stop repeat offences. When compared with community measures, imprisonment and longer sentences were tied to more repeat offences, according to research by Smith, Goggin & Gendreau (2002). The Commission is aware that this new approach to justice may be viewed by many in Saskatchewan to be soft on crime or radical. However, the Commission believes the principles of restorative justice can be used to improve the outcome for both victim and offender. Applying these principles also promises to reduce the high number of First Nations and Metis people in the criminal justice system. These achievements, while decreasing the use of a costly criminal justice system, provide a benefit to everyone. For a cost-benefit analysis of change, see Chapter 9, *Aboriginal Justice in Saskatchewan 2002-2021: The Benefits of Change*.

Both the *Criminal Code of Canada* (pertaining to adults) and the *Youth Criminal Justice Act* (pertaining to youth) create space for restorative justice by permitting alternatives to formal court procedure. These alternatives may be used before charges are laid, or after, and allow use of restorative justice. (See Appendices 8 & 9.)

Another opportunity for using restorative justice is conditional sentencing, which allows people to serve their sentences in the community as long as they observe certain conditions. The *Criminal Code of Canada* and the *Canadian Corrections and Release Act* open the door for involvement of First Nations and Metis communities in corrections and parole and to restore people to their community. (See Appendices 10 & 11.)

The Law Commission of Canada describes the authorization in the *Criminal Code of Canada* for restorative justice as follows:

The sentencing principles set out in the Criminal Code provide legislative support for the implementation of restorative justice processes. Although the Code says that sentences ought to be proportional to the harm caused by the act, the principle of proportionality is balanced by another provision that states that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Moreover, recent amendments introduced, for the first time, a provision that explicitly refers to alternatives to incarceration – which



might include sanctions agreed to through restorative processes – to be considered when a court imposes a sentence. This provision also emphasizes the need to give special consideration to alternatives in the case of Aboriginal offenders.

In addition, imposing sentences is also an option in a restorative process. Considerable case law has been generated regarding the appropriate conditions for imposing a conditional sentence. The Supreme Court of Canada makes it clear that a conditional sentence is “generally ... more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations and promotion of a sense of responsibility in the offender” and that “restorative sentencing goals do not usually correlate with the use of prison as a sanction.” Moreover, the Supreme Court points out that a conditional sentence, properly imposed, can meet the goals of both denunciation and deterrence. (Law Commission of Canada, 2003)

The introduction to the *Youth Criminal Justice Act* lists the values behind this legislation:

- Society has a responsibility to address the developmental challenges and needs of young persons.
- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of the young persons and providing guidance and support.
- Accurate information about youth crime, the youth justice system and effective measures should be publicly available.
- Young persons have rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.
- The youth justice system should take into account the interests of victims and ensure accountability through meaningful consequences and rehabilitation and reintegration.
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.



Saskatchewan has shown support for restorative justice in a number of ways. The Saskatchewan government has approved a Restorative Justice Strategy with the following goals:

- Enhancing community safety and protection.
- Reserving the formal justice system for the most serious of matters.
- Developing alternative measures for less serious crime.
- Strengthening communities by involving victims, offenders, government and community members in a balanced approach to criminal behaviour.
- Reducing crime by increasing offender accountability to victims and communities.
- Increasing public trust and public perception of the fairness of the criminal justice system.

The goals of the Restorative Justice Strategy are consistent with Saskatchewan's Aboriginal Justice Strategy, which aims to involve the First Nations communities in developing approaches to justice that are culturally sensitive, responsive to community needs, holistic in delivery and give authority to the community. Focusing on crime prevention, improving race relations and building bridges within the justice system will achieve these objectives.

This policy and legislation described above provide ample opportunity for using restorative justice at the community level. The Commission recommends changes to federal legislation and expansion of provincial policy, as explained in Chapter 6 – Justice Institutions. These adjustments would expand the provisions for community involvement and restorative justice.

It is the responsibility of all governments to make sure that legislation and goals are backed up with sufficient funding, training and support. While communities strongly back restorative justice, they are also wary of off-loading. They fear taking on responsibilities that government formerly looked after, without a shift in funding and training.

TRANSFORMING JUSTICE

The Commission was invited to attend a Symposium on Justice, coordinated by the Office of the Treaty Commissioner. During the symposium, several Elders provided instruction regarding the concept of justice as seen through the Treaties. Prof. John Borrows was invited to document the symposium. Prof. Borrows referred to the need for a transformation:

If you reformed a caterpillar you would get a better caterpillar, if you transformed a caterpillar you would get a butterfly.



It is not enough to simply reform the way in which the criminal justice system operates, if all that implies is adding a few Indigenous elements onto the current system, however welcome they may be. It would be more valuable to talk of transformation; changing the way the system operates at all levels to take account of the Treaty relationship. Reform seems to connote taking what lies at hand, and making it better. Transformation seems to imply taking what exists, and making it different and even better still. While both processes start with what currently exists, reform only allows for change within a particular scope and context, while transformation permits change of both scope and context. If you reformed a caterpillar you would get a better caterpillar, if you transformed a caterpillar you would get a butterfly. Treaties are the path to the transformation of the criminal justice system because they allow the people of Saskatchewan to start where they are, while simultaneously reorienting the entire scope and context of how they approach and achieve justice. This metamorphosis would gradually alter the reach and framework of what could be accomplished to bring about peace and order in the province. It would provide a degree of comfort for current justice personnel because they would not change what lies at the heart of their jobs, though the range and context in which they carry out their work would be dramatically revised and expanded. They would still be expected to be good police officers, lawyers, judges, parole officers, etc., but they would be expected to practise their profession in a Treaty milieu, taking account of any change that Treaties would require.

The Commission agrees that transformation is needed. Transformation includes a change in thinking so that restorative justice is stressed at every opportunity. Along with this change in thinking is the shift in the role of communities, so that restorative justice can take place in an important way.

For transformation of the justice system to succeed, Saskatchewan society must no longer use the criminal justice system to handle social problems. Resources and support to individuals, families and communities must be provided before behaviour becomes criminal. Meanwhile, within the criminal justice system, officials must be encouraged to use sentencing alternatives. Transformation would change the way the criminal justice system treats people. It would have more understanding of the major impact this system has on people's lives. Saskatchewan residents expect to be protected from criminal behaviour and dangerous individuals. Important improvements can be made that will lead to transformation of justice delivery in Saskatchewan.



Justice Continuum
 Alternate Measures
 Courts

Pre-contact with Criminal Justice	Initial contact with Criminal Justice	Pre-charge-Diversion	Post-charge - Diversion	Incarceration	Re-integration
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The Terms of Reference for this Commission spell out the goal of finding solutions for the future, and this has been our focus. The Commission believes that these solutions can be found in respecting the ability of First Nations and Metis people to assume their rights and responsibilities while working with all the people of Saskatchewan.

Restorative justice movement is not totally Aboriginal ... It hasn't moved far enough for us. There's the traditional justice, and there's restorative justice and there's Aboriginal justice. Restorative justice has melded some Aboriginal ideas and some different ideas ... so it's right in the middle. And for us we need the movement to go a little bit more further. So that's one of my issues that that movement has to accept more from the relationship, building relationship protocols and how people treat each other. (Participant, Restorative Justice Roundtable)

COMMUNITY INVOLVEMENT

First Nations and Metis community members strongly support the natural role of community in justice at every stage. As noted by a number of participants in the community dialogues, the term justice is not confined to what takes place within the criminal justice system.

So we're talking about things beyond jail cells, things beyond judges, lawyers, police. We're talking about healing principles, forgiveness and looking beyond, why is this person this way? And that's what we talk about when we're talking about "community-driven" and "holistic"; it's just not the law or a situation where one size fits all. It's got to be community driven. (Speaker, Federation of Saskatchewan Indian Nations presentation)

Participation of community members all along the justice continuum is the foundation of a restorative approach. One Restorative Justice Roundtable participant suggested that restorative justice is anything you can do to keep everything in the community. This requires putting resources into the communities and making people who break the law accountable to their communities, as that's where they would go anyway, after custody. The Commission heard many times of the interest of communities to assume responsibility for further restorative justice, providing there was a needed shift in resources.

But again, growing up here I was always taught what was right and wrong. We were always told goodwill always overcome evil; virtue will be its own reward. Justice came automatically. (Elder, Treaty Four Community Dialogue)



Reform has got to go hand in hand with being a participant, communities and leaders. It's got to go hand in hand. We have some responsibility. (Speaker, Black Lake Community Dialogue)

Developing alternative forms of justice other than incarceration came up. The Criminal Code already allows for this. We have alternative measures built in. Sometimes we get mixed up between alternative measures and alternative forms of justice. Alternative measures is a program; alternative forms of justice is looking at the whole picture. And the Criminal Code of Canada allows us to do that. So it's up to the communities to come forward with new processes and new ideas. (Speaker, Victims and Violence Roundtable)

Many examples of community involvement in restorative justice can be found throughout the province. At the Commission roundtables and community dialogues, participants were able to list numerous restorative community programs that they consider successful.

Alternative Measures programs provide the option of dealing with crime outside the formal court system. In 2003-04, eight tribal councils, six band councils, and twenty-two community-based organizations in Saskatchewan were delivering adult Alternative Measures programs. (Tomprowski, B., April 20, 2004)

Some communities are working on a whole range of justice initiatives.

One of the major institutions they're working on is the ADR, or alternative dispute resolution, and this leads directly, I think, to the beginnings of a reform with the justice system and how it affects First Nations peoples ... Mediation, adjudication if necessary. There is a lot of mediation work being done by Tribal Council justice coordinators. There are many community programs available. People are being trained in mediation and, if necessary, adjudication; in other words, if someone has to make a judgment, they will make a judgment, and we're going to talk a bit about that as part of the tribunal. And again drawing upon mediation, peacemaking traditions of our First Nations communities. So that's the general environment that we are working in terms of justice development. (Speaker, Treaty Four Governance Institute Community Dialogue)

Community involvement in policing is taking place throughout Saskatchewan through police management boards or community police boards and community policing. Many communities have set up community justice committees that are able to play an active role in local justice issues. (For further related discussion on community policing, see Chapter 5 - Policing. Information on community justice committees can be found in Chapter 6 - Justice Institutions.) At the close of the Restorative Justice Roundtable, participants were asked what they thought would be the ideal results of successfully implementing restorative justice. Their shared vision supported a stronger and expanded role for communities:



Communities would have the tools and skills to be able to resolve their own conflict, not imposed by the government. They would be healthy communities, where everyone has the right to be part of the decisions and part of the result. There would be more positive and capable youth; a sense of growth and belonging, and a positive view of youth. Communities would be safer, with flexibility for positive growth. There would be shared, respected leadership and power, as well as creativity and flexibility in interpreting policy in the justice system. Funders wouldn't be dictating exactly how money could be spent, so more focus could be on the front-line rather than in administration, where currently people are kept busy securing dollars and making programs look like they fit the requirements. Eventually less resources would be needed, and investments could be made in other things and new ideas. Then you could feel hope and empowerment, and community spirit.

CHARTING A COURSE

The Commission is convinced that restorative justice principles and the return of justice to the community will bring about the fundamental shift needed in Saskatchewan. Community interest combined with government effort promises to move justice beyond crime and punishment. While continuing to protect the public, the justice system would stress agreement and healing.

You can't take restorative justice out of its context of everything that affects the consciousness of justice, and so you can't divorce it from what happens in the field of education, health, childcare, governance, capacity, political relationships between the federal and provincial governments and First Nations communities and all of those things. That it has to be holistic, and we're not really just contrasting something with incarceration, we're talking about something larger. In fact, when we just contrast restorative justice with retribution, we miss an important pillar and that is the redistribution of the social justice aspect and that underlying all of this is that. (Speaker, Restorative Justice Roundtable)

The Commission understands that problems exist, and that they are an important factor in First Nations and Metis people coming into contact with the criminal justice system.

Through my work I see we have a whole lot of families that need a whole lot of help, guidance, support. The cycle has to be changed; they are victims of a cycle. They too aren't choosing, maybe today I'll just let my kids run and do whatever. They're not making that choice but through the

See Wachtel, T. (1999).
Restorative Justice in
Everyday Life: Beyond the
Formal Ritual.
International Institute for
Restorative Practices.
Accessible from
<http://www.restorativepractices.org/library/anu.html>



situations that they're faced with and maybe they can't cope with, for whatever the reason, whether addictions are involved or poverty is involved. (Speaker, Melfort Community Dialogue)

THE ROLE OF HEALING

When speaking of restorative justice, First Nations and Metis people often say healing is essential for individuals, families and communities.

I think we have to start bringing our own children back to the community, teaching them the culture, and that way they respect the land, the people, and themselves ... You have to be able to forgive and start dealing with a lot of these issues on a personal basis, because if you don't deal with it from that perspective then it doesn't matter how much money you get, the problem is still going to be there. (Speaker, Beauval Community Dialogue)

When I hear people express their pain, the pain that they have, that they carried with them all through their lives, and the anger that is created from that pain, and we talk about healing, I think that's part of healing, is forget the pain and the anger. That is something that we will never get rid of because it was an experience that we have come through and it becomes our reference for teaching our youth, for teaching our children. The main teachings of our great-great-grandfathers and great-great-grandmothers was to listen. The first teaching, listen. And you have eyes, you are blessed with eyes and that's to look, look around you. There is a lot of things around you that you can be grateful for. There is a lot of good role models around you that you can look up to. That's the way you learn.

The second most important teachings of our ancestors was to get along with things and people. There are lessons in the universe and it's about the unwritten history, you know, your stories. The stories that you tell today are very important. You are important for all our children, our grandchildren, our great-grandchildren. We have a history behind us. We are history. Our history should be taught to our children by our Elders, the values, the beliefs of our people in all four directions, the unconditional love, respect, honesty, bravery, generosity, the love of nature, purity. The spirituality of our people is what has pulled us through all these trials and traumas in our lives. (Elder, Dialogue with Elders of the Office of the Treaty Commissioner)



Research supported by the Solicitor General and the Aboriginal Healing Foundation found that personal and community healing in First Nations and Metis communities is just emerging and for this reason there are few assessments of it. However, they found this wide range of outcomes:

The healing movement is generating many levels of interconnected outcomes, which are hard to track and measure, especially using existing (culturally patterned) models and tools. While specific program interventions at the community level have a direct impact on individuals, so does the emerging climate within the community, the many activities associated with the growing cultural renaissance, the emergence of a growing number of inspirational Aboriginal role models at the local and national levels, the increasingly confident and positive portrayal of Aboriginal peoples and issues within the growing Aboriginal media, the resolution of key land claims, self-government initiatives, etc. (Lane et al, 2002)

Healing will not work without such backup as parental support, childcare, healthcare, schools and treatment to meet routine and special needs. Paid community help to support recovery is important. Spirituality has often been referred to as fundamental to healing, and people able to provide it, whether traditional or Christian, must be available and respected.

I think if we can give families what they need to ground their family values and bring family back into the system, to identify with their cultural background and their needs, then they are the ones that are going to improve and provide opportunities and create initiatives. (Speaker, Meadow Lake Community Dialogue)

Communities and governments are showing initiative in providing opportunities for restorative justice. For example, the Commission was told that on Thunderchild First Nation, the justice coordinator is holding talking circles where everyone can get to know one another and seek guidance from others. (Restorative Justice Roundtable) Similarly, men's and women's wellness circles are held weekly at Pelican Narrows. (Pelican Narrows Community Dialogue) Children are learning about conflict resolution and anti-bullying in schools. (Treaty Four Community Dialogue and Restorative Justice Roundtable) The integrated approach, which forms the basis of School^{Plus} holds great promise if embraced by school staff, service providers and community members. (Tymchak, 2001)

The Commission pictures a justice strategy that provides opportunity for restorative justice and community involvement at each step along the justice path. It would apply at the first contact with the justice system, through conditional sentencing or imprisonment, and end with acceptance by the

And then we did the healing lodge, and that was a plus. I thought this is what we need more of in our communities ... It's for family healing, that's where it begins, in the family ... We need healthy people. (Speaker, Pelican Narrows Community Dialogue)

We need to inject significant healthy adults in the lives, continually and consistently, of young people, as the solution. (Participant, Restorative Justice Roundtable)



community. The Commission sees each step of the justice path as an opportunity to restore individuals. The inclusion of community is vital, given that people will likely have ties to the community in each phase.

Step 1: Contact With the Criminal Justice System: Meaningful Options

You know, you want to build an individual and most individuals want to build themselves, and we go from that point, you know. If we can help them in any way to identify what their areas of need are and how we can support them in developing themselves as individuals, then they'll have a stronger family unit and a stronger community. I think we do a lot of programming in the area, throughout the whole continuum of care, starting with, you know, prenatal care all the way into adulthood, and our Elders are very much involved in all of our programming. (Speaker, Meadow Lake Community Dialogue)

Some health problems, the Commission was told, are regularly handled by the criminal justice system. Among them are mental health cases and the increasing number of people with FASD in conflict with the law (as discussed in Chapter 2).

Mental Health

The deinstitutionalization of the mentally ill means people with severe mental illnesses are on the street, and money formerly spent on institutionalization is not spent on care in the community. So that means no one cares until there are problems, so nobody cares until you can't cross Broadway Bridge because they're screaming that God is telling them that they have to stop all the traffic. And that happens ... Often the YWCA and the Hantelman Unit are the only options available. And the reality is that we're not always able to assist them, and Hantelman is full ... So these people are on the street, and no wonder they're interacting with the criminal justice system ...

The reality is that the police end up being like a taxi service for the mentally ill, moving them from, they're disruptive at the hospital, so they've got to go get them out of there and take them someplace else. So they bring them to the "Y" and they're disruptive here, so now they've got to come and remove them and take them over here. Like, literally. And we're talking about a large group of people, not a small group of people ...

Again the mentally ill, who cares about them until their behaviour becomes unacceptable and people call the police. (Speaker from the Saskatoon YWCA Crisis Shelter presentation)



The Commission accepts that persons with mental health disorders or other disabilities such as FASD who come into conflict with the law are not receiving the specialized treatment they require from the justice system. In the majority of cases, the disability is not recognized or taken into account. These individuals may not understand what it is they have done wrong or the significance of any penalty. (More on this subject can be found in Volume 2 of this report – Fetal Alcohol Spectrum Disorders and the Justice System by H. Rae Mitten.)

In every case when it is evident that a person in contact with the law has a mental disorder or disability, police, lawyers and judges should make every effort to deal with the charge outside the criminal justice system. They should use a restorative justice approach as provided for by section 717 of the *Criminal Code of Canada*. This section provides that alternative measures, which are measures other than judicial proceedings, may be used to deal with persons who are alleged to have committed an offence, as long as protection of society, and certain other conditions, are met. (See Appendix 8.) One of these conditions is that any alternative measure must be a program authorized by the Attorney General or other authorized person. Therefore, the Commission also recognizes that authorized resources must be available to do this.

Recommendation 4.1

This Commission recommends that every level of government support the education of police, lawyers and judges to recognize mental disorders and disabilities in order to divert these persons with mental disorders and disabilities to appropriate resources.

Contact With the Police

The first contact with the law can point the offender to a restorative justice process and, in time, a productive life. On the other hand, it can direct the offender to the criminal justice system where there is no shortage of negative role models and the myth that a life of crime pays.

One of the problems we have, certainly with the youth justice system is when we made our “great leap forward in civilization” and moved from the JDA [Juvenile Delinquents Act] to the Young Offenders Act, it was a colossal and foolish mistake. The big concern the federal government had with the Juvenile Delinquents Act was everything was too informal, nobody knew what was happening, and while that was something of a problem, there were other ways to correct it than by saying, “Okay, now we are going to formalize a justice system for kids.” A number of us predicted then that we would end up in exactly the position we’re in now, where we are turning youthful malfeasance into crime. And there are a great many of us, I think, in the prosecution’s community who are

The secondary disabilities affected with this syndrome [FASD] are mental health problems, disrupted schooling, inappropriate sexual behaviour, alcohol and drug problems, which combined, often lead to conflict with the law. (Speaker, Prince Albert Town Hall Meeting)



thankful that we weren't 12 to 18 when that regime changed because we'd have criminal records, too. We do tend to rely on prosecution way too much, it's as simple as that. (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

The use of discretion and restorative justice for activities that do not pose a danger to the public will often mean the difference between a criminal record and prolonged involvement in the justice system.

I have a great concern in this community with the youth and the justice system. I think a lot of the young people, and I'm talking older teenagers, shouldn't have a criminal record for many minor things that they are charged for. I think it should be handled outside of court somehow by the community, the community members, the Elders, like a sentencing circle or whatever. (Speaker, Pelican Narrows Community Dialogue)

You have a social worker who works Monday to Friday, 8:00 to 4:30. Crises don't happen during that time in people's lives ... we have this idea and we're actually pursuing it now, to have an adolescent crisis unit that works from 6:00 in the evening until 2:00 in the morning, where if – where we would have programming for our kids. (Participant, Victims and Violence Roundtable)

First contact with the criminal justice system by First Nations and Metis persons is usually with a police officer. Because police are on call 24 hours a day seven days a week while other services are not, they respond to all types of situations. The police must have the ability to consider restorative justice while protecting the public. The Commission believes that often the police do not, or are unable to, consider restorative justice because of lack of resources, lack of knowledge, lack of peer support or, more troubling but equally prevalent, racist beliefs. This must change. One of the avenues for change is community policing, as discussed in Chapter 5 of this report.

With more emphasis on rehabilitation by the criminal justice system, courts, police and corrections are taking steps to allow elements of restorative justice to be included in the system. These advancements are evident throughout Saskatchewan, through alternative measures, conditional sentencing, and community and conditional release programs.

For adults, Saskatchewan is the only province in Canada that has a comprehensive provincial alternatives program. According to Saskatchewan Justice (2003), there were 2,780 adult referrals in 2000-2001, with 85 per cent of these referrals made after charges were laid. With 2,930 youth referrals in 2000-2001, the rate of youth participation in alternative measures is the highest in Canada. (Marinelli, 2002)



Although the use of discretion and alternatives in Saskatchewan is significant, Saskatchewan's charge rate for both youth and adults is more than double the national rate. (Statistics Canada, 2004).

As was observed at the Commission's Roundtable on Restorative Justice, there needs to be greater education for police, prosecutors and the public about the benefits of restorative justice, benefits that flow to both the individual and the community:

In terms of the issues we saw it as lack of acceptance, or this perception by many that this wasn't real justice, that it wasn't punitive and that, therefore, anybody that participated was kind of "getting off easy." So an issue around education, certainly with police and with prosecutors but also probably with the larger, the general public so they have a better understanding of what we're trying to accomplish. (Speaker, Restorative Justice Roundtable)

I think just becoming accustomed to – like, people thinking justice equals punishment and that's not, you know, that's one issue that we have to face, where we feel that restorative justice isn't going to punish the people, it isn't going to lock them up, that's not what real justice is, redefining justice. (Speaker, Restorative Justice Roundtable)

The police and Crown prosecutors need to embrace the principles of restorative justice, but will only be able to implement restorative justice in a broad way if they have the necessary options and resources available.

There are many examples of restorative justice projects at the community level that provide alternatives to the criminal justice system. The Regina Alternate Measures Program (RAMP) is a well-known example. It is operating in Saskatchewan to provide an alternative to police, victims and offenders. RAMP attributes its success, in part, to the fact that it provides culturally relevant and appropriate services. Therefore it has legitimacy with First Nations and Metis offenders.

RAMP adopts the philosophy of crime advocated by a restorative justice model. According to many of those interviewed for this paper, it delivers some exceptional and necessary interventions that enhance the justice system's ability to address crime. Its impact on the delivery of justice would be strengthened if RAMP were fully resourced to include more restorative elements where programming would take a holistic approach to offenders. (Speaker, Regina Alternative Measures Program presentation)

For more information on the Regina Alternative Measures Program contact:
RAMP
2-2815 Dewdney Ave.
Regina, SK S4R 0X8
Phone: (306) 352-5415
Fax: (306) 565-2445



The Commission is aware that much has been accomplished in the direction of alternative measures, and that Saskatchewan is leading the nation in referrals. This must continue and be strengthened with more resources for supporting communities to resolve these issues.

Step 2: The Courts: Striking a Balance

The Commission met with all three levels of court in Saskatchewan, the Court of Appeal, the Court of Queen's Bench and the Provincial Court. These courts are the final authority on all justice issues, following a traditional model of the criminal justice system. Although the Commission promotes a broad definition of justice, the courts still have the responsibility of protecting the public when restorative justice has failed or has been deemed not appropriate. The integrity of the court system must be preserved for those who maintain their innocence, so they can have a fair trial. A court must also be able to impose penalties to separate offenders for public protection. Society has come to expect this dual role of the courts and the Commission has no intention of impairing the courts' ability to do this.

However, with the exception of accused people who maintain their innocence, there are a variety of filters that should be used to stop issues from coming to court. Some of these filters have been discussed in this report under Step 1. Some were discussed in the interim report of the Commission, November 30, 2003, under Restorative Justice: Creating Opportunity in the Courts.

The Hon. Bob Mitchell, then Saskatchewan Justice Minister, had this to say in his submission to the Royal Commission on Aboriginal Peoples in 1994:

In approaching a discussion of these issues, I recognize that at one pole of the current debate are proponents of a totally separate Aboriginal system of justice. At the other are proponents of a reformed but inclusive system. As in many conflicts of perspective, a middle ground may need to be found; one which promotes much-needed reform within the current justice system while giving Aboriginal communities the space to control and develop some separate institutions. Such an approach has the benefit of providing more opportunity for responsive justice and greater ability for innovation in justice delivery. Thus, Aboriginal justice may generate ideas for reform throughout the justice system.

The Commission recognizes that the role for community extends through Step 2, and encourages community involvement in supervising probation and conditional sentences where possible, as well as in expanded use of circles, mediation and family conferencing.



Circles

As an example, circles have been a useful justice tool since the 1970s. Some circles have a more traditional flavour, while others follow a court-like practice. Although some people object to this as a misuse of a First Nations' tradition by a mainstream system, there have also been many expressions of satisfaction.

But the good thing that's been happening here, we had some sentencing circles, I think two ... Very, very successful, very powerful sentencing circles. As a result, the people have gone straight, they have not gone to jail. They've gone into recovery, they've got into getting themselves educated and getting themselves trained and they're doing jobs now, you know. That's how powerful these circles are. (Speaker, Cote Community Dialogue)

Inside the forum, I think it's really beneficial. I'm thinking of the youth who don't have a parental support or they have dysfunctional families, but when they come into a circle or community justice forum I think it's really important for them to see the community support that's there for them. They may not be able to go home and have a safe, healthy place to go back to but they do start learning to make their own safe places by what they learn in the circle. And that's where I feel it's very important to have Elders in, Elders who come with their experience in life, and even their own spiritual wisdom. I think that's very important. It's also important for them to see some of the values and the faith that a lot of our Elders have, regardless of their racial background.

I think that the process itself, where people are treated with respect, inside our circles we ask people to use respectful language and a respectful tone and speak in turn. And by doing that, that shows equality for everybody who's inside the circle, that we don't sit above each other inside there. I think that's very important. I think it just adds to the value of the person and helps them grow. (Speaker, Regina Alternative Measures Program presentation)

Using traditional circles for sentencing and for community assisted parole hearings are examples of the transformation possible within the justice system. However, these circles must be respectful of First Nations and Metis culture and traditions, and respected by offenders, who may otherwise abuse the circle.

Today, working with our Elders, we're trying to reinstate these processes with the mediations, community justice forums, youth circles, healing circles, talking circles and sentencing circles. We heard the Elder this morning talking about sentencing circles and the negative effects it has if that individual's, person's heart is not in the right place; then



they're going to abuse that system. But we have to put in the proper processes in there so that there's a need that that individual recognizes that they have to change their behaviour, and what effect it has on the people directly and indirectly, the victims, the community. So we ask you for those opportunities to bring those processes more into line with your processes. (Speaker, Treaty Four Community Dialogue)

Two projects in Saskatoon are examples of the innovative use of circles. The Restorative Circles Initiative for youth and the Circle Court at the Provincial Court House aim to include needed service providers so that the exercise is fully restorative.

With this Commission's recommendations there is an opportunity to transform the criminal justice system. The potential for innovation has been demonstrated here and throughout Canada, as we said in our third interim report. Such innovation improves the system of justice delivery and increases the opportunity for restorative practices.

There must be a radical shift in thinking long before cases are brought to court. Instead of looking at the courts as the first step to resolve disputes, society, including the police, must think of the courts as the last resort. This is the challenge that Saskatchewan faces.

When a First Nations or Metis offender is brought to court for sentencing, the direction in the *Youth Criminal Justice Act* and the *Criminal Code* is clear. Courts must use imprisonment as a last resort. The *Criminal Code* specifically refers to Aboriginal adult offenders. As well, the *Youth Criminal Justice Act*, in similar language, refers to youth and says, "... all available sanctions, other than custody which are reasonable in the circumstances, for all young persons, with particular attention to the circumstances of Aboriginal young persons."

If the courts are to fulfill this legislated mandate, there must be opportunities to redirect an offender from custody. Her Honour Judge M. E. Turpel-Lafond of the Provincial Court of Saskatchewan addressed this situation, although her decision was overturned by the Court of Appeal:

In conclusion, the Court can only express its disappointment regarding how the sentencing process for M.(B.) began in the Youth Court. No alternatives were placed before the Court and the new legislation was apparently not considered in any serious fashion. Perhaps this is because counsel were all too aware of the lack of resources to follow the spirit and intent of this new legislation.

There are no arrangements in place to support the Court in convening conferences, such as trained facilitators or



community representatives (including Elders), and chambers days had to be utilized for this purpose. An alternative was identified and explored and this is reasonable and appropriate in the circumstances. The Court notes that with the current limitations on implementing the YCJA, this kind of approach will not be possible with youth that experience the kinds of challenges which M.(B.) has faced.

Despite the image society might have of the judiciary, Judges can only implement legislation when community and institutional resources have been provided. When new legislation is put in place, such as the YCJA, the Court cannot address the root causes of offending, find rehabilitative sentences, and increase community safety without appropriate supports. Much could be said about what was not available here, and what is not available in the youth justice system in general in light of the YCJA. (*R. v. M.(B.) [B.M.]*, [2003] SKPC 83)

It is hoped that governments will provide what is needed to follow the justice path described in this chapter.

The Commission heard there are lengthy delays in court procedure. Statistics from Saskatchewan Justice confirm this, particularly for the North. In many cases accused people are remanded in custody while awaiting court appearances. The Commission understands that some offenders ask to be held in custody for long periods. If found guilty, they hope to get a shorter sentence. The courts generally count time in remand as double time when it's applied against a sentence. This practice should not be encouraged. The court system must move more quickly. It does not promote confidence in the courts nor does it hold promise for restorative justice if the sentence is delayed for so long that the offender cannot remember what it is for.

The justice system works so slowly, that by the time the system reaches the kid, the kid has either done a whole bunch more offences or has cleaned up and can't relate to what they did six months or a year earlier. There's no connection between the judicial system and the offence because too much time passes between the offence and when it's dealt with ... so either it seems that there is no punishment for crimes, or they get healthy and then that charge comes up and they end up back in jail and are influenced by the people there. There's a few that are making it and ending up being returned to the justice system, were sucked right back down into what they were in several months earlier. (Speaker, Restorative Justice Roundtable)

What I say to the judges, it takes too long to sentence people. They're on remand for a couple months and it takes forever to get to court. (Youth, Paul Dojack Youth Centre)



There is a very high volume of cases moving through the criminal justice system in Saskatchewan. Overall, the system has a significant degree of efficiency, but there are issues of inefficiency as well, and those issues of inefficiency it can have particular impact on Aboriginal people. These inefficiencies include delays to trial. Seventeen per cent of cases, the next available trial date is over six months. There can be delays in some communities to access Legal Aid lawyers for the first time. There is a relatively high use of remand in Saskatchewan, and there is an increasing number of appearances and adjournments. Twenty-one per cent of cases now have more than six appearances. (Presentation by Saskatchewan Justice and Corrections & Public Safety)

In addition, time in remand is wasted because there are few opportunities for education or activities that may have restorative results. The Commission believes that such opportunities should be available, although it realizes that participation would be voluntary.

It is hoped that when the recommendations in this chapter are in place, the courts' workload will be reduced. The result should be more efficient justice, without harming the safeguards provided by the courts. However, the Commission realizes that in the short-term there is a desperate need for opportunities for the courts to deliver appropriate decisions that also respect the values of First Nations and Metis people. All levels of government should encourage First Nations and Metis youth to become educated to help with the solutions to justice delivery in Saskatchewan. The Commission also realizes that all people who work within the courts can be influential in moving towards restorative justice. The shift to restorative justice principles should preoccupy the courts.

Recommendation 4.2

This Commission recommends the following immediate steps:

- 4.2.1 Funding be allocated by all levels of government to therapeutic resources with a First Nations and Metis focus, including: drug addiction, follow-up care, and healing initiatives.**
 - 4.2.2 That meaningful sentencing alternatives be developed by Saskatchewan Justice in cooperation with communities and Courts, to allow for intensive therapy involving Elders, healers, and supports for family, and that these sentencing alternatives have a First Nations and Metis focus.**
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Aboriginal Courtworkers

The Commission also believes that there is an important role for Aboriginal Courtworkers operating in partnership with the courts.

The Prince Albert Indian and Metis Friendship Centre originally provided Courtworker Services in Saskatchewan in 1969. The service expanded to other areas of the province and was contracted through the Saskatchewan Association of Friendship Centres. Provincial funding was terminated in 1987 and the program ceased. In 1992 the Linn report recommended the return of the program, and this moved the Federation of Saskatchewan Indian Nations, Metis Society (forerunner of Metis Nation - Saskatchewan), Saskatchewan Justice and Justice Canada to arrive at a funding agreement. Courtworkers returned to Saskatchewan courts in May 1995.

The mandate of the Aboriginal Courtworkers Program is to ensure Aboriginal youth and adults charged with an offence receive fair, just and culturally sensitive treatment.



It is clear that the services of the Aboriginal Courtworkers are in demand and play a valuable role:

Courtworkers also provide different services. We actually track services. I tried to get an internet hook-up because I can actually show you how they report on line and it's a real-time reporting system. But they report services in the following areas: in court, on behalf of clients, so they'll speak to bail, speak to sentence, adjournments; they will also provide information that people do not understand the language. Many of the courtworkers actually speak their (clients') own language.

Out of court, on behalf of clients. These services are provided: they contribute to sentence reports, bail reports, Legal Aid applications, legal service complaints.

Services to other than the accused. They'll meet with family, relative or spouse. ... They'll liaise with criminal justice systems: police, judge, Crown, defence, probation, other courtworkers, prison liaisons, complaints regarding Legal Aid services, any services, and complaints also about other courtworkers and other courtworker services around the country. We track what they actually do.

They'll do counselling referrals and that's another service they provide, where they'll actually assist people with identifying educational opportunity, job finding opportunities, health, and medical or prison liaison services.

Courtworkers are doing an increasing amount of work in the community, where they'll do community workshops, where they develop resources for their clients. (Speaker, Aboriginal Courtworker Program presentation)

Saskatchewan Justice completed a thorough evaluation of the Aboriginal Courtworker Program in 2000. The importance of this program is clearly stated in this review.

The program is a critical component for the department in meeting the goals of the Aboriginal Justice Strategy (refer to Appendix A: The Saskatchewan Context). It helps balance the needs of the accused and the needs of the system through support of the offender. It helps ensure fairer treatment for and better understanding of the system by accused people. It helps address the root causes of Aboriginal crime and victimization by connecting the accused with community resources for treatment and



support. Through the use of a community-based model of service delivery, consideration can be given to specific community needs and situations. The community model also provides an opportunity for increased Aboriginal control over and input into justice services and decisions, and involves more Aboriginal people in delivering justice services for Aboriginal peoples. The program was an important first step in the implementation of the Aboriginal Justice Strategy.

The Commission also heard about the benefits of broadening the role of a courtworker to help find housing, employment, financial assistance and other necessities that would be factors in sentencing.

Recommendation 4.3

This Commission recommends that the Aboriginal Courtworker Program be adequately resourced by the Government of Saskatchewan to meet their current mandate and consideration be given to an expanded mandate that will enable courtworkers to incorporate restorative support for those appearing before the Courts.

System Generated Charges

One thing that surprised the Commission is the high number of charges that come out of the court system itself. These arise from violating probation or not keeping a promise to the court or failing to appear in court at a time directed by authorities. The Commission agrees that it is important that the courts be shown respect. However, it is clear that charging everyone criminally for disobeying every court order is not promoting such respect. This must be reconsidered. The ultimate objective is to determine and address the root causes of individual offending behaviour and take steps to correct that behaviour.

First, the Commission believes that conditions should be put in place by the courts only when they serve a purpose. These conditions must be realistic and be based on the needs and the daily schedule of an individual. Conditions that require alcoholics to refrain from alcohol without detox support, or require people to stay away from the sex trade's "stroll" when they live in the area are bound to be broken. The Commission also heard about a youth who had to violate his conditions every day in order to attend school. He could not make it home by the 4 p.m. deadline.

Second, the Commission believes that there must be more supervision of people on bail. The Regina Auto Theft Strategy showed good results by putting youth and adults under strict supervision while on bail, according to a senior Justice Department official:



The enforcement has been based on when you get picked up for stealing your next car we discover that you're out after curfew, so you get charged with that. There hasn't been enforcement. What we've found, or one of the things we've learned with the Regina car theft project is a little supervision of those orders goes an awful long way. That money spent supervising is money well spent. (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

Third, the Commission believes that court order violations must be dealt with in a different way, particularly for youth. *Tough on Kids*, a book written by two Saskatchewan Legal Aid lawyers with extensive experience representing youth, Ross Green and Kearney Healy (2003), suggests a fresh approach to offences coming out of the court system. (See also paper submitted to this Commission by Healy in Volume 2.)

Some may call breaches "repeat" offences, and some (perhaps wiser) may disagree. But if "repeat" has become the accepted parlance, this word may also have become a code-word that explains, to a large extent, the over-representation of Aboriginal and other marginalized children in custody. Our experience tells us that applying a jail-style response to breach charges will lead only to more marginalized youth, and to more victims. It may also lead to more cries for getting tough through incarcerating more young people.

A key focus for us in this book has been how our system currently handles charges of breaching a Court order. The numbers of youth sent to custody for such "system-generated" offences is staggering, and a terrible waste. We wonder why many if not most breach charges could not be dealt with in a different way, either by diverting breach charges from the Court system, or simply by an administrative act without the necessity of laying a charge. (Green and Healy, 2003)

Recommendation 4.4

This Commission recommends that system generated charges be dealt with administratively as follows:

- 4.4.1 Youth who are subject to system generated charges and lower level offences be referred to Elder led community based teams to discern and consider ways meet the needs of the youth outside of the Courts.



4.4.2 Adults who are subject to system generated charges and lower level offences be referred to community teams to discern and consider ways to meet the needs of the individual restoratively, outside of the Courts.

Examples of system generated offences are: failing to appear; curfew violations; breaches of probation.

Examples of minor assault offences are: strictly property offences, minor assault offences.

Victims

Restorative justice means a shift to including the victim. In the criminal justice system, many victims feel that their voices are not heard. However, many victims, especially victims of violence, may not be ready to take part in restorative justice. Understandably, they may require time and help before they can take part, as well as support during the process and afterwards. In cases where the level of discomfort is too high to meet offenders face to face, Rupert Ross (1992) in *Dancing with a Ghost: Exploring Indian Reality*, suggests the traditional option of two Elders. One would be for the offender and one for the victim, with Elders acting as go-betweens and private counsellors. When done well, restorative justice is said to provide greater satisfaction for victims.

Mediation

In this province, mediation is most often the alternative measure used. An evaluation of adult alternative measures in Saskatchewan for 1999-2000 and 2000-2001 found that both victims and offenders involved in mediation felt it was effective.

A pilot evaluation by Saskatchewan Justice of the perceptions of victims and offenders who had participated in mediation showed that participants generally found the process fair and helpful:

- All offenders agreed that they had a better understanding of how their actions affected the victims; the majority said that they felt forgiven for what they had done and could make a fresh start.
- The majority of the victims were satisfied with the way the agreement was reached. The majority believed the offender understood how they had been affected and that they had received what they needed from the mediation. All said that the mediation process was better than having the offender go to court. (Saskatchewan Justice, April 2003)

I work with justice committees on the reserves out there and some of the reserves are set up well with the justice committees and so we'll talk with them, and they are the ones that do Alternative Measures and circles. And that's the way to see change in a person having to answer to their own community. (Speaker, Regina Town Hall Meeting)



An example of long-term success in mediation is Saskatoon Community Mediation Services, which celebrated its 20th anniversary in 2003. In its adult diversion program for 2002-2003, Saskatoon Community Mediation Services saw 869 accused people plus complainants and victims related to their cases. (Smith-McIntyre, H., 2004)

Family Group Conferencing

Family group conferencing can be used for youth and in some cases of domestic violence. Saskatchewan Justice statistics show little use by adults. This is because of “no-contact” orders, which prevent meetings.

Mediation, I think, is good as long as the whole family is involved in it, you know, the victim, the offender, plus the mediators that are there. I think it would eliminate a lot of people having criminal records. (Speaker, Pelican Narrows Community Dialogue)

The Commission maintains that these services are seriously under funded.

As was recognized at the Commission Roundtable on Victims and Violence, victims and offenders often share similar circumstances, histories and challenges.

There’s also a fine line between victim and offender, and a lot of cases people we see as offenders are really victims. (Speaker, Victims and Violence Roundtable)

We also realize that services provided for victims must be provided in a shared way.

Well, that makes me think of, I’ve been thinking recently about how important working in an integrative, collaborative way is so important, and so many of us work in isolation. Like, even to do, like just conferencing about a client, it just seems to take forever to get the people involved, you know the circle of people involved with that person together. (Speaker, Victims and Violence Roundtable)

Step 3: Corrections: A New Direction

Correctional centres, youth facilities and penitentiaries appear to be where society sends persons it wants to punish. In some cases offenders need to be separated from society to ensure the public’s protection. However, the vast majority of these offenders are entitled to be released at a fixed date. Some elements of society believe in the philosophy of “lock them up and forget about them.” The Commission knows this philosophy is unrealistic, unproductive, expensive and, in the long term, potentially unsafe for citizens. The opportunity for healing and restoration is needed for better results for the offender and for the long-term safety of society. Indeed the Commission believes that jails provide



strong potential for true restorative justice. It is here that a motivated offender can appreciate the seriousness of his actions and chart a course to becoming a productive member of society.

You know thirty years ago people used to go to prison, they wanted to smudge with sweetgrass, they couldn't do that. Now we have Aboriginal programming ever since 1982, which is really good, that's one of the successful things I see.

I worked with the Elder, I worked with the inmates, you know, first-hand along with the staff ... So this is what I find, you know. Aboriginal programming, Sweats, ceremonies inside the institution is one successful thing I see. As a matter of fact, I seen that success here two weeks ago, I usually practise my culture quite a bit, I go to Sweats quite often. I went to a Sweat ... and here is this same person I had seen in prison, you know, from previous years. He is out now, he is leading a really positive life and he was at the sweat, and I thought, "Oh, my goodness, here is a success here." But the unfortunate thing about it is that Aboriginal people find their culture a bit too late. Not too late, I should say, maybe at a time when they should have learned it earlier. They find their culture and their language and their ceremonies within the institution, that's sad, but they come out and they start, and when they come out they live a positive life. (Speaker, Onion Lake Community Dialogue)

And my research suggests that whether you think this form of traditional healing works or doesn't work, regardless of your standard or how you want to define that, the bottom line is that it seems as the individuals who become active in the traditional healing programs are also more active and more open to the other kinds of programs as well.

So from a correctional point of view, an entirely self-serving observation would be that even if you don't believe traditional healing is worth anything, the bottom line is that if guys are involved in that, they have a better attitude towards everything else that's going on in the prison. They're less likely to get into trouble. They're much more respectful to the staff. They seem to participate more in the other kinds of programs. (Speaker, Research Roundtable)

Equally important is religious freedom for inmates. The Commission met with the Assembly of First Nations ministers and accepts their legitimate request to be allowed to visit imprisoned people and provide reintegration services.

Well, when you have an inmate that's released on some kind of restoration program, there's a certain training element involved there, and it is relevant that the human rights



freedom of religion be respected of that particular individual in terms of his choice of the type of mentoring or teaching that he may be subjected to, that may involve his religious convictions. (Speaker, Assembly of Christian Ministers presentation)

Awareness of the benefits of this approach has led to the creation of the Okimaw Ohci Healing Lodge, Willow Cree Healing Lodge and the Prince Albert Grand Council's Spiritual Healing Lodge. Healing lodges use a holistic philosophy in offering services and programs that reflect Aboriginal peoples' traditions, spirituality and beliefs.

However, despite these promising developments there remain concerns, which were raised at the federal level by the Correctional Investigator in his 2002-2003 report:

Based on our review of Correctional Service data and offender complaints, it is incontestable that the disproportionate barriers to safe, timely release of Aboriginal offenders constitute a continuing crisis and an embarrassment – even more so in the case of Aboriginal women.

We have long advocated measures designed to bring a focus to these problems, to ensure an Aboriginal presence and perspective at the Senior Management table and cause an independent and informed review of the Service's policy and procedures as they relate to discriminatory barriers to timely reintegration.

Stemming from the focus on addressing Aboriginal issues in the 2000 Speech from the Throne, the Correctional Service Executive Committee had indicated that specific measures needed to be taken to address the disadvantages of Aboriginal offenders. The Commissioner indicated at that time that the Service had "to ensure initiatives created lead to results."

The concerns regarding the lack of resources to help First Nations and Metis people are reflected in the October 2002 special report of the Saskatchewan Ombudsman.

Despite Corrections' agreement with the effectiveness of Aboriginal programming and the need for more Aboriginal programming, and although significant steps have been taken, overall progress has been slow. More Aboriginal programs and more Aboriginal instructors are needed. This will inevitably require more program space, which is already falling short of needs. It will also require more instructors qualified to deliver Aboriginal programming from an Aboriginal perspective.



One of the concerns raised in the Commission's Terms of Reference is the over-representation of First Nations and Metis people in prison. From the perspective of a restorative justice approach there must be a way to make sure that when First Nations and Metis prisoners are released, that they will not return to crime. The Commission believes that there is a need for culturally appropriate and Elder-led Aboriginal programming within all correctional facilities.

There are far too many First Nations and Metis men in jail across this country, but particularly in this province. The court system now recognizes this, as does society.

Courts have said such restorative justice must be more individualized, based on a realistic assessment of the offender from his point of view, as well as the future relationship with the victim and his community. Justice must protect the community from short-term and long-term harm. The offender must be encouraged to participate in a healing process, which involves victims and community. There also must be an infrastructure in place that can provide holistic approaches to healing, and at the same time will ensure protection to the public during the healing process.

It is unrealistic to believe that First Nations people coming from extremely disadvantaged backgrounds can be rehabilitated once the cycle of crime has started – by successive and increased periods of incarceration. What is required in such cases is guidance, encouragement, training and supervision. It is essential that programs be put in place for First Nations people to break the cycle of incarceration, programs that the institutional healing lodge will provide. And the start is a facility to facilitate healing lodges within the grounds of an institution. (Speaker, Dialogue with Inmates, Regina Correctional Centre)

That being said, we are aware that the preparation for the healing journey must begin within the institution as soon as possible, healing that will reach the roots of the individual, such as residential school abuse, sexual or emotional abuse, and violence both at home and in the community. This includes childhood abuse, physical, emotional and sexual, the curse of alcohol and drugs and other addictive behaviours, and the loss of culture throughout the generations because of assimilation and government policies. (Speaker, Dialogue with Inmates, Regina Correctional Centre)

Community planning and support is an important part of successful reintegration. Once again, adequate resources and community partnerships are needed to make this a reality.



Some of our biggest issues are the lack of services for women after incarceration. We have women going to jail and coming out and they are thrown back out into the community with no services available, no one there to say, "Okay, you might have screwed up once but now we're going to help you wind your way back in." Maybe that would be through education, through employment programming, through just having somebody there when you're pressured, to say, "Okay, I'm there for you." (Speaker, Central Urban Metis Federation Inc. presentation)

Research has conclusively demonstrated that imprisonment does nothing to deter other potential offenders from criminal behaviour.

CONCLUSION

The restorative justice model must not be limited to the criminal justice process. All people in Saskatchewan must recognize the value of restorative justice. There is a need for all Saskatchewan people to embrace the concept of justice with an emphasis on restoring justice, individuals, communities and the province of Saskatchewan.

And then in closing, I guess, I would go back to that we still, we will never be a part of you. [But] we're always, everything is interconnected. So what I would like to say is that we both work together to make this process a process that deals with all human beings equally, not just white or black or blue, but for everybody, and then an incorporation of our traditional processes that are meant for the good of everybody. (Speaker, Treaty Four Community Dialogue)

Maximizing the use of restorative justice principles holds promise to benefit all Saskatchewan people and provide long-term solutions to the reliance on the expensive and less humane criminal justice system. The principles of restoring social harmony, taking responsibility for one's own actions, empathy and restitution for those who have been harmed is an approach that is respectful of all involved. These principles, which are compatible with First Nations and Metis traditions, and are inclusive of community, provide potential for meaningful outcomes for everyone as have been demonstrated throughout the province.

It is recognized that the road to a restorative justice model is not smooth. Criticism has and will be pointed at this approach, by people uninformed of its long-term benefits, as being soft on crime. This Commission believes that the only way to create a healthy, just, prosperous and safe Saskatchewan, working in harmony is through a comprehensive restorative justice model. Determined and sustained leadership and partnerships with communities are needed to bring this about. It will involve leadership from all levels of government. Moreover, true Champions for Change must also step forward and identify and support the vision. We are all capable of being Champions for Change, and we all have our part to do in returning justice to the community.

