RESTORATIVE JUSTICE IN NOVA SCOTIA

YEAR TWO

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PART I

VALLEY RESTORATIVE JUSTICE,

2001 MONTHLY STATISTICS

Over the course of the year, 2001, the Monthly Reports complete by Valley Restorative Justice (VRJ) changed towards the completion of a standard form in June. The analysis that follows takes into account the availability of some data for a variable numbers of months. In addition, three comparisons are made with comparative data from the first 12 months of Restorative Justice (RJ) and with the last fiscal 12-month period of Alternative Measures.

1. REFFERALS TO RESTORATIVE JUSTICE

Table 1. Restorative Justice Referrals, 2001

	Pre-Chg	Post-Chg	Post-Conv	Post-Sent	Total
RJ REFERRALS					
Referrals Received	125	28	0	1	154
Referrals Accepted	123	28	0	1	152
% of Accept Referrals	80.9	18.4		0.7	100.0

Completions	58	10	0	0	95
Non Completions	6	2	0	0	13
Corporate Victims	31	1	0	0	32
Private Victims	59	20	0	2	88

VRJ received 154 referrals from three of the four levels in 2001. Only two of these were not accepted: one was a pre-charge sexual assault that was turned back to the police because, under the RJ mandate in NS, sexual assaults are excluded from RJ at all levels. The other was an assault case that was sent back because the case workers believed the youth was not taking responsibility for his actions. The great majority of referrals come from the police (pre-charge level), accounting for about 81% of all referrals. The Crown referred twenty-eight (18%). No referrals were received from the Court level, for a post-conviction sentencing circle.

Over the year, VRJ recorded 95 completions and 13 non-completions, giving a completion rate of 88%. For pre-charge referrals, the ration of completions to non-completions was 58:6 (90.6%); for post-charge (Crown) referrals, the ratio was 10:2 (80%). While this might be expected, the numbers are too small to draw any conclusion.

Altogether, offences involving 120 victims were referred. Of these, 32 (26.7%) were corporate victims while the remainder (88 or 73.3%) were private victims.

Finally, in 2001, there was a considerable increase in the number of referrals (from 117 to 15), 25 more referrals from the police and 12 more from the Crown (although proportionately the increased in Crown referrals is greater). In 2001 81.2% of referrals received by VRJ were from the police (see Table 1.1). This is a small decrease over the first 12-month comparative period under RJ, when 85.5% were from the police. Correspondingly, the proportion from the Crown has increased from 13.7% to 18.2%. Under Alternative Measures, only pre-charge referrals could be made; hence 100% of referrals came from police agencies.

Table 1.1. Source of Referrals, Alternative Measures vs. Restorative Justice

Referrals Received	**1/4/98-**		**1/11/99-**			**2001**	
	31/3/99		**31/10/00**				
	Number		Number	%		Number	%
Police level	129		100	85.5		125	81.2
Crown level			16	13.7		28	18.2
Court level			1	0.9		0	0.0
Corrections level			0	0.0		1	0.6
Total	129		117			154	

2. OFFENCES REFERRED

Over the year 2001, 156 charges were referred to VRJ. The one referral that came from the Post-Sentence stage (Corrections) involved four related charges: robbery, theft,

joyriding, and mischief. They are listed in the following table only as 1 Other CCC offence. Multiple charges were uncommon, but they did occur with two other referrals.

Looking overall, almost one third of the offences (31.4%) were for theft under. Break and Enter and Mischief/Property Damage accounted for 17.9% each.

Again, while the number of referrals was small, some interesting differences were apparent at the Police and Crown referral points. Of the total, the Crown appeared to refer a greater proportion of Other Criminal Code" (7.1% vs. 17.2%), of Liquor offences (3.2% vs. 13.8%), and drug offences, generally low-level possession charges (4.8% vs. 17.2%). On the other hand, the Crown tended to refer proportionately fewer Break and Enters (21.4% vs. 3.4%).

Table 2. Offences Referred: Pre- and Post Charge, VRJ, 2001

Offence	Pre-Charge		Post-Charge			
	Number	%	Number	%	TOTAL	% of Ttl.
Assault	7	5.6	3	10.3	10	6.4
B&E	27	21.4	1	3.4	28	17.9
Theft Under	42	33.3	7	24.1	49	31.4
Fraud	6	4.8	0	0.0	6	3.8
Mischief	20	15.9	3	10.3	23	14.7
Property damage	4	3.2	1	3.4	5	3.2
Other Criminal Code	9	7.1	5	17.2	15	9.6
Liquor Control Act	4	3.2	4	13.8	8	5.1
Other Prov/Municipal	1	0.8	0	0.0	1	0.6
Cont. Drugs Act	6	4.8	5	17.2	11	7.1
Total	126	100.0	29	100.0	156	100

The variety of "Other Criminal Code" offences referred is presented below:

Table 2.1. Other Criminal Code Offences, Pre- and Post-Charge, VRJ, 2001

Other Crim Code	Pre-Chg	Post-Chg	Post-Conv	Post-Sent	Total
Threats	1	1			2
Poss Stln Prop	1	1			2
Unlawful Confinement		1			1
Disturbance (fight)	3				3
Joyriding		1		1	2
Mischief (>$20000)		1			1
Possession Weapon	1				1
Sexual Asault	1				1
Breach Undertaking	1				1
Careless Use Firearm	1				1
Robbery				1	1
Total	9	5		2	16

Major differences do not appear to emerge from these relatively few cases (Table 3). The police referred some disturbance offences. There is no correlation between "Other" offences and those that are necessarily more serious. However, it is worth pointing out that the Police referred two offences involving weapons (Possessing a Weapon and Careless Use of a Firearm), while the Crown referred an "Unlawful Confinement" case, a case of joyriding, and a Mischief offence involving a substantial loss to the victim (over $20,000).

Table 2.2, below, examines the distribution of charges referred to RJ in two 12-month periods compared to the last fiscal year under Alternative Measures. Certain trends apparent for the first year of RJ appear to be strengthened. For example, there were proportionately fewer "Theft Under" referrals under RJ, down to 31.2%. There were proportionately more cases of Mischief, Break and Enter, Possession of a Narcotic, Underage Drinking, Fraud, and Damage to Property. It appears that the trend in RJ is to refer some cases that, previously, would have resulted in charges (most likely being concluded with a fine). It should be noted that both under the last fiscal year of AM, and 2001 under RJ, a considerable variety of charges were laid, approximately 17 different types under AM and 19 under RJ (2001).

Table 2.2. Offences referred to VRJ: Alternative Measures vs. Restorative Justice

OFFENCES	**1/4/98-31/3/99**			**1/11/99-31/10/00**					**2001**				
	PreCrg	%Ttl		PreCrg	PostCrg	Total	%Ttl		PreCrg	PstCrg	Pst-Snt	Total	%Ttl
Theft Under $5000	81	55.1		37	4	41	35.3		42	7		49	31.2
Mischief	15	10.2		15	3	18	15.5		20	3		23	14.6
Break and Enter	16	10.9		16	0	16	13.8		27	1		28	17.8
Assault	9	6.1		6	2	8	6.9		7	3		10	6.4
Possession of Narcotic	2	1.4		4	2	6	5.2		6	5		11	7.0
Underage Drinking				4	0	4	3.4		4	4		8	5.1
Uttering Threats	4	2.7							1	1		2	1.3
Joyriding				3	0	3	2.6			1	1	2	1.3
Possession Property	4	2.7		3	2	5	4.3		1	1		2	1.3
OHVA				2	0	2	1.7						
Take MV w'out consent				2	0	2	1.7						
Fraud									6			6	3.8
Arson				2	0	2	1.7						
Damage to Property				2	0	2	1.7		4	1		5	3.2
Sexual Assault				1*	1*	2	1.7		1*			1	0.6
Trafficking				1	0	1	0.9						
Car Theft				0	1	1	0.9						
Possession of a weapon				0	1	1	0.9		1			1	0.6
Trespassing				1	0	1	0.9						
Personation with Intent	1	0.7											
Improper Storage Firearm	1	0.7											
Sexual Interference	1	0.7											
Property Protect. Act				1	0	1	0.9						
Other Prov/Mun									1			1	0.6
Other (Below)	7	4.8											
Disturbance (Fighting)									3			3	1.9
Unlawful Confinement										1		1	0.6

Mischief (>$20000)									1		1	0.6
Breach Undertaking								1			1	0.6
Careless use Firearm								1			1	0.6
Robbery								125		1	1	0.6
TOTAL	141		100	16	116		126	29	2	157	100.0	

3. RESTORATIVE JUSTICE PROCESSES

It is in the recording of Restorative Justice Processes that there were the most inconsistencies in the Monthly Reports. In April, the Reports break down the Sessions into the pre-charge, post-charge, post-conviction, and post-sentence components. Prior to that, these were not differentiated. Table 3, then, indicates that 123 sessions were held for the year 2001

Table 3. Restorative Justice Sessions, VRJ, 2001, and May-Dec. 2001

	Account		**V/Off Med**		**Com Conf**		**Total**
	Number	% Total	Number	% Total	Number	% Total	Number
All Sessions							
Number of Sessions	59	48.0	48	39.0	16	13.0	123
# Victims	0	0	53	82.8	11	17.2	64
May-Dec 2001							
Pre-Chg Sessions							
Number Sessions	32	49.2	24	36.9	9	13.8	65
# Participants	165	46.9	135	38.4	52	14.8	352
# Victims	0	0.0	29	80.6	7	19.4	36
Post-Chg Sessions							
Number Sessions	12	70.6	4	23.5	1	5.9	17
# Participants	48	64.0	23	30.7	4	5.3	75
# Victims	0	0.0	5	71.4	2	28.6	7

Of the 123 sessions held in 2001, almost half (48%) were "accountability" sessions. Thirty-nine percent (39%) were Victim/Offender Mediation sessions, and the remaining were Community Conferences (13%).

More complete data is recorded for the May to December period, and some differences emerge. During that period, combining pre- and post-charge, 82 sessions were held altogether, 65 at the pre-charge level (79.3%) and 20.7% (17) at the post-charge level. The majority of sessions (44 overall 53.7%) were "Accountability". This represented a consistent 49% of Police referrals (32 of 65), but included as well about 71% of the Crown Referrals (12 of 17), which were dealt with as "Accountability" sessions.

With respect to the number of victims, for most of the months, the number of sessions that have a victim present is not recorded. The total number of victims who

attended sessions in a given month is recorded, but some sessions may have more than one victim present. In some cases, the offence itself does not have a clearly defined victim. This is particularly true of cases such as possession of an illegal substance (alcohol or marijuana). In such cases, it is not clear where or if "proxy victims" have been included as participating "victims". Furthermore, Victim-Offender Mediation or Community-Conference sessions that proceed despite the failure of the Victim to attend as promised would likely be classified as "Accountability".

With these limitations clear, from examining Table 3, it is obvious that victims do not attend "Accountability" sessions, by definition. These account for almost half of all sessions (more than half if the May-December period is examined separately).

Logically, Community Conferences and Victim/Offender Mediations would involve more participants than Accountability Sessions. Combining pre-charge and post-charge session from Table 4, this can be shown to be the case. There were 44 Accountability sessions with 213 participants (an average of 4.8 participants). The average number of participants for Victim/Offender Mediations was 5.6 (158 in 28 sessions), and for Community Conferences it was 6.2 (62 participants in 10 sessions).Just looking at the number of victims, 34 victims attended 28 Victim/Offender Mediations, while 9 victims attended the 10 Community Conferences. Again, though, it would be useful to be certain what proportion of mediations and conferences have an actual victim in attendance; that is, that once a victim does not attend, a conference/mediation is reclassified as "Accountability".

It should be noted, as well, that in 2001 no Post-Conviction circle sentences were held, nor were any post-Sentence sessions held.

There were also no data in the monthly reports to indicate from which agencies (or Counties) the various referrals came.

The following Table (3.1) adds the 2001 information into the comparison of RJ with the former Alternative Measures programme.

Table 3.1. Types of Sessions: Alternative Measures vs. Restorative Justice

RJ Processes	1/4/98-		1/11/99-		2001	
	31/3/99		31/10/00			
	n	%	n	%	n	%
Accountability (No victim pres.)	69	60	44	49.4	59	48.0
Victim-Offender			36	40.4	48	39.0
Conference (Incl'd community)*			9	10.1	16	13.0
Circles**			0			
# with Victim present	46	40	45	50.6	64	52.0
Total	115		89		123	

More sessions were held in 2001 (123) than in the first 12 months of the programme (1999-2000 = 89), and also compared to the 1998-1999 fiscal year under Alternative Measures (115). The trend in RJ for there to be an increased likelihood that the victim would be present was maintained: victims attended 52% of all sessions in 2001, similar to the 1999-2000 total (50.6%), both of which were higher than the comparable figure for the Alternative Measures comparison of 40%.

4. VICTIM PREPARATION SESSIONS

Beginning in June, the Monthly Reports provide some data on victim preparation sessions. These data appear below in Table 4.

Table 4. Number of Victim Preparation Sessions, VRJ, June-Dec. 2001

	Number	%
Private V (adult)	20	57.1
Private V (youth)	6	17.1
Small Business	1	2.9
Municipality	4	11.4
Corporate Retailer	2	5.7
Corporate Other	2	5.7
Total	35	

While Table 4 gives indicates the number of preparation sessions that were held with victims for the last 6 months of 2001 – 35 in total – it also provides a limited breakdown of victim characteristics. Private victims comprised 74.2% of the total for whom pre-sessions were held. This indicates, overall, that corporate victims seldom attend sessions. Table 1, above, indicated that, for 2001 as a whole, referrals were made on behalf of 32 corporate and 88 private victims – 24.6% of all victims were "corporate" (using an extended definition to include all businesses and municipalities, and such community members as churches). This is beneficial for Restorative Justice since private victims are more likely to agree to attend a session.

One other trend involving victims can be gleaned from the Monthly Reports. For 8 of the 12 months of 2001, the data indicate whether the referrals involved corporate and private victims, as well as the type of referral (or example, pre- or post-charge). Table 4.1 summarizes this information.

Table 4.1. Type of Victim by Referral Source, VRJ, Feb., May-Dec. 2001

Corporate Victims	Pre-Charge	31
	Post-Charge	1
	Post-Conviction	0
	Post-Sentence	0

	Total	32
Private Victims	Pre-Charge	59
	Post-Charge	20
	Post-Conviction	0
	Post-Sentence	2
	Total	88

Of the 32 corporate victims, 31 entered the RJ process as a result of a police referral. Of the 88 private victims, 20 entered RJ through a referral at the Crown level. This may indicate that, while the police are less likely to refer offences with private victims than corporate ones, the Crown may be compensating by sending these offences at the post-charge stage.

5. COMMUNITY SERVICE ORDERS

Finally, Valley Restorative Justice is also responsible for Community Service Orders that are dispensed to young offenders. The following Table summarizes the data available from the Monthly Reports on young offender CSOs assigned to VRJ.

Table 5. Community Service Orders, VRJ, 2001

		Number	%
Referrals Received	West Hants	13	15.7
	Kings	49	59.0
	Annapolis	21	25.3
	Total	83	
Completions	West Hants	8	18.2
	Kings	22	50.0
	Annapolis	14	31.8
	Total	44	
Non Completions	West Hants	4	8.9
	Kings	30	66.7
	Annapolis	11	24.4
	Total	45	

Almost 60% of CSOs come from Kings County, certainly also the most populous in the jurisdiction of the VRJ. Kings also has relatively lower completion rates and relatively higher non-completion rates than the other two counties. There is little point in speculating about this distribution. For example, it is unlikely to represent a rural/urban difference. Although Kings does have a higher population density than the other counties, the population is entirely small town or rural.

PART II

Interviews with Case Workers

Work Satisfaction

Respondents among the caseworkers find RJ satisfying, in the words of one, "definitely' I would say". This was because they get to see much more the positive side of criminal justice than others in the system. They see positive results; most leave the meeting satisfied." You don't see that same look coming out of court". Regularly, though not always, the parties spontaneously shake hands at the end. There is a sense of relief, and people are often smiling at the end. RJ is an "amazing phenomenon", one respondent said. "The meetings are actually easier than would be expected. It isn't usually difficult to get the group to negotiate, even larger sets of people. People want it to be successful, they all give and take." Another respondent added that RJ is satisfying work "when it goes well, when something come out of it that makes a difference for the youth, to help keep them on track a little more, although it may only have sounded like that at the time, and things derail again later." In some cases it can be quite effective, especially in a small community setting. There can be a real restoration, everyone can feel more satisfied. They all know each other. It is a good process for all of them. Cases like that can work very well, even in a school structure for example."

Differences between AM and RJ

Caseworkers agreed that there were significant differences between RJ and the previous AM. Compared to AM, one respondent said, a lot more time was spent on most cases, although some of the accountability sessions were not that different. Follow-up can be as brief as one hour or take 24.

As far as sessions go, an AM session took ¾ of an hour to an hour. "We would set a date without talking to them. Half of the time they would come to the meeting and you wouldn't have spoken to them." An accountability session may take one to 1 ½ hours. "We are doing pre-meetings now; they never existed before. Last night I talked to a victim for 45 minutes, the victim was the father, and it wasn't until I was well into the conversation that I realized there had been prior abuse. I didn't get that from reading the file. Now I have to talk to a counsellor about the case before I take it any further." RJ conferences take a lot longer, there's 100% difference in preparation, and they can run over two hours. With victim/offender mediation you have to take longer because you have to get both sides out, a fuller picture, and there are more people involved.

Caseworkers agreed that there is more impact in a victim/offender mediation session. The offender has to face the victim. The Conference can go either way. There could be multiple offenders. The dynamics are different. You have less time with each youth. "The victim always has a powerful impact if they are there." One caseworker said that victims "are important in the meeting, but then we kind of drop them in a

way. We have to follow up with the offender, and then we can be working with several cases at one time." But the victim is often left out.

The conferences can be more difficult. "They are tougher. Things get more hashed over but you can get a better agreement. Victims often have high expectations and this can keep the ante up".

One caseworker said the main differences that come with RJ over AM is the pre-meeting sessions and the advantages this gives in preparing a case. "Things run more smoothly with pre-meeting sessions, for sure and it becomes a deeper process." Under AM "they might just come for the one hour; lots of issues were missed. Now the investment in time makes it a deeper process." The "trust issue" is much better because of all the contact: the phone calls, the letter, the in-home contact, there is a "bigger connection". "That's lots better than just walking into a meeting with complete strangers."

Difficulties: Volunteer Role

A major concern with one caseworker was with the volunteers. This was expressed in the context of general support for volunteers, but was nevertheless quite critical. Sometimes, the caseworker aid, difficulties arise with volunteers. "Now, I really do support community justice and the community taking responsibility for helping build the volunteer role. I enjoy the volunteers very much. But the practicalities of working volunteers into the system is most difficult. I don't necessarily suggest it's any better, but we might be better off with a core group of paid volunteers. Victims Services has volunteers that are paid and are on call." So caseworkers have to spend a lot of time on the volunteers. It can be a "hassle". A caseworker said that she had a meeting tonight and had looked for a volunteer for two weeks, but every volunteer is busy. "Now I appreciate what the volunteers go through. I was a volunteer. But yesterday I had a dilemma about whether I should cancel or go ahead without a volunteer. You need two facilitators. I'm comfortable doing session by myself, but I'm not comfortable if they have an issue with me and how I do things."

Another caseworker raised the problem that volunteers do most of the follow-up. "I have volunteers following up with these offenders. What is difficult for me is – how do I put this? – for me this is my priority. In the life of a volunteer it is not; it's lower on their priority list. So I call volunteer 'X' and say, 'How are things going with y?' Then I hear, "I don't know, I haven't talked to him in two months.' I say, 'Oh no!' I feel guilty being critical of volunteers; I know it's not their priority and it's my responsibility. Delegating is my least favourite part. Volunteers have a real interest in the community and in the offenders, but they are busy people."

Another difficulty the caseworkers mentioned was the caseload. One respondent said: "I have 54 offenders I am responsible for. Then, if anything goes wrong with any of them I have to go back to the Police or the Crown." Another commented, "The most stressful part is the scheduling of it, the time frame, to get it done in time, to get the parties to the table at the same time. It is the coordination that's hard."

Training: Need for more if role becomes more complex

The respondents were asked about their training. One commented that training is "certainly adequate for what we are doing now. But if we go into sentencing circles, or much more serious cases, much more training needs to come before we can accommodate that." If the adults come on, it will be a whole "new kettle of fish". Lots of people are involved with RJ "because they like to work with youth. Moving to adults will be a major shift and I imagine some people won't like that. I personally see it in many ways being easier. You'll be dealing with an adult rather than a offender and his parents and his support system. It can get very complicated with youth." The caseworker noted that some offenders come with supportive parents, but not all. She thought that adults may be more rooted in the criminal world; offenders are often just experimenting. But she thinks it would be good to work one on one with adults. "They are mature enough to know that the ball is in their court, that the onus is on them to fulfil the agreement. With offenders you have to be holding their hands a lot more. So "I am looking forward to working with adults, though you see a lot of resistance to it."

Accessibility

RJ is not accessible for all. For example, in a case "one co-accused was diverted – no not 'diverted', that is a bad word; was sent to court and the other to RJ. The victim was the mother of the child who was sent to court; "she was involved in my session as the victim. She wanted to know why this offender gets to have this chance when her own son didn't get it." In the caseworker's view, the offender who was sent to court did not retain a lawyer. For offender # 2, the family retained a lawyer; the lawyer talked to the Crown, and got the case referred. So it is not equally accessible. The second offender came from a family with more money, so the first offender ends up with a criminal record. "Another reason RJ is not equitable is that it depends what officer responds to the call whether or not it goes to RJ. We take what they send us. A lot depends on the discretion of the police officer whose file it is."

Another caseworker said that she thought RJ "favours the articulate offender who can be pleasant with the police. The police dislike people who lie or stand on their rights and won't give a statement, who won't play along. They think they're hiding something. Some offenders are just honest. If not initially, they will become honest. Lawyers improve your attitude. A few offenders are smart and will work it. Most offenders are a lot more honest than many adults."

Efficiency

Asked if RJ was efficient, one respondent commented: "Ah, well, it is very time consuming. Sometimes at the very lowest level we could fast track them quickly. You don't need a pre-meeting. We never did in AM. It can only be cost saving in the long run if you make a difference, if they don't proceed to a crime career. But I guess as it is

the numbers in the youth centre will go down, so that makes it efficient. You need to put more money in the front end – it is hard to price that."

Expanding RJ to higher-end cases

One caseworker said that family violence could be handled in this type of forum. "I am not skilled or qualified enough to assess these cases, so it isn't proper for me to do them, but they would be OK if professionals were involved." The case she mentioned where the father was the victim: "I am not comfortable with that and with the negative things that may result from the meeting. The idea of discussing a problem among the whole family, coming together and talking, is a good thing, but it would need a tremendous amount of preparatory work and would need to have professionals involved. I couldn't do this by myself." She felt the same about sexual assault cases.

Another also thought that family violence might be appropriate for RJ in some circumstances, "maybe lower level, but that covers a lot of ground. Some cases are not appropriate though there may be some that are. It is possible to include family violence because I know it has been done in other jurisdiction." "Sexual assault is also done in other places. It can be successful, although I only know this from watching a video. If it is done properly, and done with a sexual assault centre, it could work, but there is a lot of danger involved. There is also a real fear that there will be a lot of pressure put on the victim to go that route."

Adults

One caseworker hadn't thought much about going to adults. It seems that it is farther down the road. But doing young adults won't be much different from doing youths. It might work with adults at the victim/offender level, but "why would we do accountability with adults? Probation has more resources at their disposal. It sounds like they have an effective way of doing it with adults. But the victim/offender part, I could see working, maybe even better than with offenders. We were really trained in an adult model in Winnipeg, but in Manitoba the victim has a veto. That might make it work differently." She concluded: "It would be nice to see more referrals from the Crown, more from the upper levels. We haven't done enough to see how they will go."

Final Comments

What would make things better? "More time and more money. We are so busy. The place we are really lacking in is with the volunteers. I wish we had greater contact with the volunteers, that we could provide them with more training, and things like that. I don't know how supported the volunteers feel. It is easier to let the volunteers slide than the cases. I don't know how committed they feel. One newsletter went out in August – its hard even to get a volunteer newsletter out. Even that falls on our shoulders."

PART III

Interviews with RJ Volunteers

Nine volunteers, all women, attended an evening focus group on the role of volunteers in RJ. They were from all three counties. Almost all of them had been volunteering long enough to have experience in both the AM and the RJ streams and most were in the 30s or older; a few were younger with less experience. They came from varied backgrounds: social worker, EI investigator, nursing, court reporter, para-legal, B.Ed. student. Only one of the women had not received the specific training for RJ. There seemed to be two general orientations. Some appeared to prefer a more informal approach; others were clearly there to provide an experience that was formal and meaningful, a justice model for young offenders.

Differences between RJ and AM

One of the biggest differences for one woman was the existence of the pre-meetings. This opened up a debate about whether the pre-meeting was a good idea, whether the actual session was just a boring reiteration of everything that had already been said and done. Maybe serious meetings require a pre-meeting but not the lower level accountability ones. It is redundant, a repetition of the same thing. "This is especially so if it is a matter of a 95 cent piece of candy." It is a waste of their time, money, and effort, and it is frustrating for us because you get in there and its like, we already heard all this.

In AM pre-meetings were done over the phone, not as involved as now. The pre-meeting now is important, but this is on a case by case basis. For example, a victim who you know is not comfortable, than a pre-meeting is important. But otherwise you do go through quite a few things that have been done and said already. The difference is that the second time it is at a more formal setting that, hopefully, makes a difference. One volunteer said that the pre-meeting file can lead you to anticipate and worry about problems coming up, when they seldom actually do.

Since some volunteers reported that many times the victim doesn't show, having the caseworkers notes is beneficial because then the facilitator can explain, directly, what the victim was thinking and feeling. "We can incorporate what the victim has said and incorporate that." You at least need to have that victim impact statement. They couldn't do this without the pre-meeting. One volunteer said that she only gets about 5 minutes to look at the file, and starts cold, having the offender tell her what happens. Most people don't know RJ exists until they become a victim or a parent of the offender, so they need a lot of education, whether before or after he session, especially for the victim, who wonders what is this going to do for me? "They need a push," said one. "The victim has a say." They felt that if they have a say about what is going to happen

they are actually getting back some control that they thought they lost when someone stole something from them.

Another difference is that under RJ but not under AM you have victim impact statement: "that's in there big time when before it wasn't. Even when the victim isn't there, sometimes they want to be there and can't, you can read an impact statement. Or the police officer who has spoken to the victim can speak on her or his behalf."

A facilitator said that her technique is similar to what is done at court, acting like a lawyer, unravelling the story a bit at a time from asking questions of the offender. "I've had several parents who have sat their and said that's not exactly what they told me at home… you get more details and admissions that way. The parents say 'Oh my God.'" RJ can also have a big effect on an offender. One offender stole donations to the Heart and Stroke foundation. "The victim had the kid crying at the meeting when he told him what that money would have gone for – exactly how hard they did work to get this money." One volunteer said that she "really found most of them [offenders], with very few exceptions, to be remorseful…. They never really thought about it at the time. The meeting is the first time they really had to talk about it and it brings it home." "It teaches a kid consequential thinking." "A lot of them come and they're shaking in their boots, because they've had interviews, they've had police things, the parents down their neck, and all of a sudden they have to face a couple of strangers who are either going to put a rock around their neck and throw them in the water."

There was difference of opinion about whether there was usually or seldom police officer there. Hants County officers seem to be attending less; Kingston officers do attend; Greenwood military is always there.

Volunteers were asked about the amount of information they had going into the session. The general view was that they pick up the basic information about the offence before going in, but don't go over the fine points. But then they "don't stop until the get the whole story at the table", which they see as an advantage…. We don't often use the file." Another added that they "keep picking away at the story, not saying you're not telling the truth, but using techniques."

For many, RJ "is better". "You share the facilitator role more. Not just starting off, although that is important. You decide who is going to do what, share the role." "We call it co-facilitating, particularly if you're with someone you know and have worked with before."

A major difference with Alternative Measures is that you can have more than just accountability sessions. One volunteer said that she was fortunate to attend a group conference where there were five or six offenders, in a case involving damage to a school. "I was asked to go as a representative of the community. It was an interesting role reversal. It's amazing how eloquent you get when you are the victim. It really puts you in a different seat. There were twelve people there and it was a whole different scenario. You almost have to pass the feather to talk…. You would never see that in the old system. Everyone agreed, everyone was happy, and the kids are still planting flowers…. There was an agreement for each kid and each was different…. It was really an excellent experience."

One problem with these sessions was that they are tiring. Because of the intensity, one volunteer said that she found the meetings "gruelling. You try to keep it going, keep it focused, without people going off on tangents."

They said they get more victims now, unless it is a corporate victim. The victim feels that the attention is on them at least equally with the offender.

Was there a greater variety of offences? "Now they allow more serious cases…. They can go through the system again." "Now technically, you can have a second chance, although you don't stress that."

In AM "victims would show up without too much interviewing, and there'd be brimstone and fire, and sometimes it was difficult to calm them down long enough to actually listen to what was going on. Now with the interviews, at least they get a betters sense of their role or how they can use their role to make things better, and by that time they have calmed down and be able to have their say."

While one volunteers talked about an offender's mother who was aggressive and obnoxious during the process, usually the parents are very grateful that their child has the opportunity to go through the programme.

In reality, it is more like a court process than it was before. "That's an advantage. Our whole purpose is to do it in a personal manner." "Whatever way it happens, the information is written down and it all comes out, in court or in the session."

They felt that there was more freedom for the co-facilitators to play different roles to complement each other, and take up lack or bring in missing pieces. Even bring the session back to its original object if the Chair is letting it wander. "Accountability is a stronger focus. "It used to be like, oh don't get them too upset because you're not a counsellor, you're not a social worker, you're not this, and don't say this and don't say that, and now that freedom is there where you can jump into a little bit of a puddle and get yourself back out again."

AM "was mainly working for the offender and his family. We sent that letter out to the victim and hoped they came and that was it."

Facilities

Facilities used for sessions were raised as a problem. One session was to be held in the Board Room but it was accidentally double-booked, so it was moved to a space described as the size of the table we were sitting at. It was an assault, and the mother was there who taught him to be assaultive, in a facility that was way too small. It was more than tense; "it was physical because the facility did not match the personality of those people. It should have been put off, because it ended up as a physical confrontation between the co-chair and the mother. The facility just made everything much more tense." On the other hand, if it is a small intimate gathering of, say, four people, the boardroom is too large and impersonal. "You're trying to get away from [the idea that] I'm at the head of the table and you're at the end. You're trying to personalize the system, and that's not comfortable." One volunteer recounted a meeting: "This accused is suicidal, she's sitting there bawling her eyes out, and the

mother is, like, [shouting], `It's ok!' It's not a comfortable environment…. I just think, you talk about professionalism, if we had standard rooms with the same types of facilities…." As described, sessions were held in quite a variety of inappropriate places, more often too big than too small, or laid out in the wrong way. Because a Board Room is used by other groups, "you would be just at an intense moment in a session and someone would open the door and say `Are you almost through?'" You need "a standard room in each community that's prioritised, that has the same facilities, like access to a phone." "You can't talk about feelings in a room where the people are too far away, or where she's in my face." This topic led to quite a bit of discussion about inappropriate rooms where sessions were held, and for a wish for some standard rooms for different types of sessions.

Difficult experiences

The main problems mentioned were those few cases where the offender's attitude did not make facilitation possible—dealing with a kid who doesn't really take responsibility and has been lying. "I had one that was a bitch. It was the only kid we closed the book on and then sent it back. Only one I had in eight years. And that kid should not have been there. She was not cooperative; she was rude; she didn't want to be there. This kid was completely out of control. It wasn't the right process for her."
One difficult session a volunteer (co-chair) commented on was a situation here there were a lot of "family issues" underlying the offence. The problem she had in this session was with the victim. "She would not cooperate as a victim and that was the first time I had encountered that. As soon as she heard the offender speak she would start talking and interrupt her and say `No, that's not the way it is. You're lying.' You couldn't get anywhere." She was told that she would have her opportunity to speak and that everyone had to have a say, "but you couldn't get though to her." The victim eventually "stormed out" and could not be persuaded to return under the conditions of speaking one at a time. The chair was glad to see her go. "Her mother spoke to her in the hallway, but it wasn't going to work." The meeting, then, devolved into an Accountability session.

In RJ, unlike AM, it was pointed out, "you feel free to take a break if you need to and start again, more fresh, if things were not going right." One volunteer noted that she felt tied to a script in AM – there were three stages, each took 15 minutes, and you felt that you had to keep things moving along to the 45 minute mark. RJ "can take longer and is more beneficial because you're not fast-forwarding it".

The issue of how to handle underlying issues was mentioned. The difficult session just explored had its origins in family difficulties involving step-sisters. When the session begins to get into the deeper, underlying issues that may be the root cause of a single episode (that is, the focus of the offence in question), one volunteer said, that is a good time for the co-chair to intervene. She would say "`oops, we're getting in a little too deep', and then she takes over and you have the time to figure out what she's done yourself, and then you can go back in. That's why there are two." "The purpose is not to

really get into anything like that. We're not counsellors. I don't really want to get into anything like that;… only a little bit maybe to have it make sense."

One volunteer mentioned a problem of "continuity". She had received a referral from court, but was not aware that it came from court. "They had gone to court but that information wasn't there. She even had a hearing, a court date after this and it wasn't there. And until the parents stated that information, I didn't know about it. That changed the process of the hearing, quite a bit, significantly…. It changes because, obviously, the information that she was charged with … there was no court docket that stated that she was even there … She was in with us for a lesser offence that overlapped, which came first, the chicken or the egg. I didn't know any of that information, and of course when it went to `you have a right to legal counsel' she said she already had a lawyer. `You had a lawyer? You're here and you had a lawyer?' That wasn't in there either…. The charges were all from the same incident and there others involved. It was quite an in-depth trial. There were two other offences attached to that one offence she was in with us for. So that was one situation and then the offence had changed on another file that they were changed with -- it changed just prior to the hearing and it wasn't put in there. So I thought she was charged with theft and she wasn't; it was damage to property so there was a little mix up there."

Police Officers

One volunteer noted that she was lucky because in her detachment area (Kingston), most of the police go out of their way to attend the hearings. "Police officers will be the first to tell you that they're not there to intimidate, but we're getting much more serious cases, right? Just a little comfort zone there and it makes it a little bit better. They are the first to see those offenders and the state they're in and we can say that they said they did it but they don't really mean it, or whatever, and why are they here and they should be thrown in front of the court. But the officer saw them first, in the state they were in. He made his judgement based on that and, just by being there [at the hearing] he can say, `Oh I saw you cry. OK, give up the strong guy routine'. And that has an impact as well. And sometime it can be a comfort zone for the victim and the parents who think, `he knows everything about me and my family now because of the situation'."

Also, "with the information that's there, if there is a hole there, the officer fills it in". "There's all kinds of reasons why we need the officer there." With the cop in uniform, "it brings it back to the youth that it is an official situation -- you are charged with an offence. It is far more formal that way…. When you hear them explain to a kid what can happen if you have a criminal record I think it means far more coming from the police. We can explain to them that you can't work at McDonalds, and you can't travel easily, but if they [police] say it, is has far more impact." It was recognized that officers can be very busy, but it was suggested that they should have a person at the detachment, somebody who can come and represent the police.

Another volunteer who found she had less police involvement usually, said that the police must take the programme more seriously. "There may be a chance that they don't take us as professionals as well, I don't know, but it is time to get down to the nitty gritty and if they're going to put big money into this programme, to start making all the coordinates with the same focus. We're just like the mothers. Like, 'I heard it from my mother; I heard it from my mother for the last so many years', and now we're more mothers in front of these kids. Well with an officer, more professional, formal in a uniform and more court-like, there it is, it all come together. There are 101 reasons why but I really think for the success of this program, that it has to taken seriously. No more its personal, no more its detachment. This programme either flies or it doesn't…. Just as an officer has to go to court, an officer has to go to a session". "About escalating the offences, I think it should be mandatory for the police officer to be there. Because it does add a seriousness to the issue." In some detachments, officers who work together know each other's files and can cover for each other on an RJ hearing if another officer can't make it.

Training

The issue that came up spontaneously was the problem of paying your own way to go to training sessions. One example was given where the volunteer was expected to pay her own registration fee. "Any training shouldn't be at our cost." [They were getting mileage for this session]. Volunteers recounted that it was not just their time, for example, in supervising community work, but also money. They felt the same way about paying money to go to conferences.

"I'd like to see training outside of the office, outside of the staff of RJ. Training by the Crown, by the police. Because it is taken more seriously. It is always the same people training the same stuff, and it becomes monotonous over the years." One complaint was that over the years the training seems so similar, that they had "gone over the same things they had gone over year after year…. And it may not be, it just feels like it." "I don't think they are provided with the money, or the tools, or the resources to do it well enough. But if the Crown comes to you about how he makes a judgment call on where it goes, then you have a different insight into that. That's fills a hole." The point was that if you are knowledgeable about the whole system, then you can't be "bull-crapped" by a family or a victim – "Oh yeah, they told us this, or they told us that. We can say `Oh no, we know it happens this way'." It is more professional. Again "it is a whole process and we need to know about how it works, not just from the office point of view, and how it comes to us." From another perspective it was suggested it was "difficult for the staff to always be the ones to do the training and to go to the trainer training sessions."

One difficulty mentioned was that volunteers who only do sessions occasionally feel out of it and then the next minute, they are asked to do a session. They haven't done one for six months and feel uncomfortable. "There should be some sort of upgrading that maybe we're required to do, some continuing education, like you have

to have so many hours a year of this and the province is going to offer this, people who have training." They were "coming into contact with all different kinds of things, like assaults, drugs. Things are changing all the time. I don't know a whole lot about that and there may be something in the session I haven't heard about before or kids are doing that's new these days…. Those are the kinds of things that we need training for, to have someone from drug awareness, or the police, like what the latest shoplifting thing is."

Other issues

"There's a whole lot of things going on in that [RJ] office now and we're in the dark about what's going on. And the board meeting, etc. And one file I have now the staff member in charge she's out doing anger management." The problem seemed to be that changes in the office and too many role responsibilities being played by caseworkers made liaison difficult.

"I was having trouble getting a hold of the youth and now he's way overdue on his statement of agreement. I don't know; I'm very strict. If this is like a courtroom type hearing, with these statements, there shouldn't be any leniency. And I find in too many cases there's too much leniency, `Oh, we'll give him another two weeks', so these kids aren't completing their hours on time. I'd like to see it be strict; if we say something got to be done by a certain time it has got to be done by a certain amount of time. And that there will be consequences. If you don't get it done in time we're going to give you another ten hours. Because nothing happens if they don't do it." The concern was that two many things were taking the case workers away from the office, including being trained to train. "That takes up the hours that they are paid for, and therefore they aren't in the office." The problem, then, was that when difficulties arise with the agreement, it was difficult to get in touch with the caseworker, or they were slow getting back, because they had so many other things to do. "You need the case worker to rattle his chain, but if the caseworker is not around, there is the missing link. You can rattle his chain all you want, but a caseworker hits home. That's why they are case workers." They did not feel supported by the office in cases where the follow-up was difficult or the kid was not complying. Or they felt that the office was too lenient and this undermined their efforts to get the agreement met in the allotted time. This includes difficulty, for example, getting access to the parents of a non-compliant kid, because the office has the numbers and they are not always quick to get back to them with the information. One volunteer complained that, when the situation is difficult, the caseworker doesn't want the file back, but "What do I do with it? We're not being served enough."[Volunteers got into a long discussion about how they make sure that offenders are on track. Again, the issue of how much time and money it costs to do follow-up arose. Different styles of supervision were apparent. For those who had run out of ideas, or had run into a difficulty with compliance, there was a feeling that they did not receive enough, or timely, help from the caseworker. The threat they used was, if the date is not met, it goes back to the office and "You're going to court."]

Lots of time, follow-up is not time-consuming or difficult. There are a few cases where problems arise and these give rise to the complaints.

Should volunteers do the follow-up or should this be left to the caseworker? There was a suggestion that this work should be paid. [It was hard to get the topic changed here].

Are there debriefing sessions? "Why can't we have a provincial conference where everybody goes and you can meet other people and where you can have workshops…. And then you can talk to people, not listen, talk… It has to be interactive. If I have to do more serious cases, I want training, like role playing." This would be an opportunity to discuss "cases you had that you weren't sure of and you could ask, `how would you have handled this?' Maybe somebody else had gone through the same thing and can make a suggestion."

One volunteer noted that, at her last session, she had the "perfect victim". "She was advocating for the offender, she was doing so well. And I think part of that was that she was prepared ahead of time. I haven't seen that before. They used to come there [under AM] not knowing what to expect. This one knew what to expect. She was empathetic to the offender. It just made things go so much better. According to the notes I had beforehand, I wouldn't have known that before I was in the room with her because she was apparently pretty mad. It was a case of joyriding and car stealing – very serious stuff."

Spousal violence/sexual assault

Should Restorative Justice include cases of spousal violence and sexual assault? One volunteer commented, "It would be appropriate if the training were there." Another said that, if "this [change] is done all at once, it is overpowering, unproductive, got nothing but failure written all over it. It has to be built up to. You don't just take a fresh volunteer and put them in certain…." In general, she added, "There should be a step programme for volunteers as well. Let new ones do so many 99 cent shoplifting. We all get our bicycle people and they do make a difference…. But you can't go from bicycle to serious assaults. That is too drastic. There should be documentation of what volunteers have undertaken as well." You also can't have some just staying at that level "and then the ones who want to move up can't because they don't move out." It was pointed out that at the RJ training, volunteers were asked at what level they were interested in working – they asked that personal question again.

PART IV

Interviews with the Community Panel

The Community panel consisted of a variety of individuals working in diverse areas of the community but not specifically related to criminal justice. It includes community health nurses, educators, reporters, local politicians, and business owners or managers. The more removed the respondent was from working with youth the more likely were they to have only a passing acquaintance with the Restorative Justice programme. Invariably they remembered receiving the Executive Summary but it appeared that it was not widely read by the community panel, although one said that it was gratifying to read that his viewpoints were being reflected by others, as well. Several respondents remembered reading a couple of newspaper articles about RJ in the *Chronicle Herald*, but still had only a vague idea of what the programme entailed. For many interviewees, the best source of information about the programme was information supplied by the interview process itself.

Two educators, an administrator and a school principal (who would have children at the lower end of the YO age group) reported that they had not heard the term "restorative justice" at all over the year, and had no offence-related activity at the schools that involved the intervention of the police. Even in the wider community of which they were a part, they knew of offences only casually through local information networks through which, again, the RJ programme was not raised. A local politician, however, had more familiarity with the term. RJ had been mentioned as an "up-and-coming programme" in a meeting of the NS Association of Police Boards and had also been mentioned in Association mail-outs. He said he was more likely to have heard it from the *Chronicle-Herald*, but said he did not have "a good understanding of the programme, who gets in, how they get in, who does it to whom", and so on.

One politician commented that RJ should only proceed with the agreement of the victim. The victim has to receive some tangible benefit from the process. One panel member commented, though, that, "It would be a good thing if at all levels of the system you had to ask whether RJ would be the appropriate thing to do under the circumstances".

Pressed on their opinions about extending RJ to serious offences and/or offenders, one local politician did not think that an RJ forum was appropriate, but he added that there was "no better answer. Sending them to Shelburne or Waterville certainly isn't going to help. The answer lies in prevention." All these other forms of intervention take place after the fact rather than before an offence occurs.

One tendency among the respondents was to draw a line in terms of individual cases. In the view of one respondent, RJ was appropriate for YO's who come from stable homes. Other Y0s won't really benefit from the help RJ could provide because they don't have "respect for the process". The Y0 has to show the proper amount of deference to authority, whether it is a parent, a teacher, the police, or the RJ process. If there is no respect for the process, then the Y0 should go to court. In the words of one

politician, "If the perp sees it as a soft system, he lets a few crocodile tears out and then moves on, he's back in Zellars in the afternoon", then RJ is not working.

The question of extending the programme to include more serious offences and repeat offenders was generally interpreted as a matter of drawing a line. When pressed on this point, there was a tendency for most to wish for a clear definition of inappropriate referrals, not based on the characteristics of the offender but the offence. For example, one educator would exclude any case that involved physical violence against a person, where the offender's actions were "detrimental to the victim's safety or health". It was more appropriate, he said, for cases of property damage or loss of property, cases in which the victim is not quite as obvious or the impact on a specific victim isn't as great. This does not reflect the general philosophy of the programme, however, since it is in cases of personal victimization where there may be the most in need for reconciliation and restoration. A politician said that certain offences involving the violation of trust should be excluded.

Similarly, there was a tendency among the community panel to want to draw a line on repeat offenders. Not one said that it should be a one-chance programme, but one suggested that it should not extend beyond a second chance. However, one politician believed that even repeat offenders shouldn't necessarily be cut off automatically from an RJ process. Even shoplifters who had gone through the RJ process several times could still be considered again. "No automatic exclusion", was his point. In his view, sometimes a very small event can have a profound effect in helping a person turn the corner and change his or her life. You need to give it a try several times to see whether it will be effective or not. They have to "look into the eyes of their victim" and, at some point "the light bulb will come on in their head".

One educator reiterated his point that what was necessary was earlier intervention in a co-ordinated fashion involving numerous social agencies. This did not happen because there is often overlapping mandates and competition for limited funds and resources among agencies. Punishment alone was ineffective. He recommended a programme he called "24-7" where youths were given a co-ordinated intervention involving psychological and emotional help, anger management, as well as other types of interventions. A Lunenburg County programme run through addiction services (The Western Regional Health Board) was also cited as a positive example. An educator recommended a form of "boot-camp" although he did not mean what the term implied, which is a heavy dose of discipline, but more in the line of a survival camp where youth had to learn to be responsible to one another. Basically, he adopted a cognitive approach arguing that Y0s need to learn to make better decisions regarding their actions.

Business Sector

In the business sector, again little new information was forthcoming. One store manager said that his large retail store apprehended about 40 shoplifters last year, about 40% of whom would have been under 18.Most of the adults were also younger, he noted. The store policy was to prosecute and the police were always called. The

manager said that the store would later receive a notice about the police decision with regards to laying charges or sending through RJ. At that point, the store could have some input but rarely made any suggestions since he felt that it would not be taken into account. As all respondents in this sector suggested, the store ought to have the right to decide whether a case would proceed by charges or through diversion. He said he could tell, in the initial interview, whether it had been done on a whim or through peer pressure, or whether it was not the first time. "You could tell by facial expressions, emotional reactions", and so on.

Another manager recalled very few cases involving youthful shoplifters in his store, though he was less blunt about numbers that the manager mentioned above. In fact, he reiterated in detail the story of an employee who had been defrauding the store and was eventually sent through Adult Diversion. This story was probably more than a year old, but it still resonated with the manager with respect to betrayal of personal trust on the one hand and the sympathy for the circumstances of the offender on the other. The manager was currently aware, through community gossip, that the ex-employee was having difficulty finding new, permanent work but was, apparently making some payments on her restitution agreement (involving over $4,000). The store policy on minor theft was to hand the matter over to the police and then, if it were referred to RJ, not to send a victim representative on the grounds on the inconvenient loss of time and money involved. In the big picture, he said, RJ was a good thing; but from the point of view of running a business, it was not easy. This perspective is common among "corporate victims" who seldom send representatives to the RJ session. Small business operators, however, were more likely to attend although the bottom line of participation would be equally – or perhaps more – serious for them.

A corporate manager was equally concerned about loss of time and money if cases went through court. A case involving an adult he recalled went through court. He said they had video evidence and several witnesses. Three employees received subpoenas to attend court, but in the end the case was dismissed. On another occasion, he said, five employees received subpoenas but were sent home at noon when the case was rescheduled. Sending a case through the courts necessitated greater loss of time than having it referred to RJ, where the victim need have nothing further to do with the case. This manager expressed some liberal sentiments. He said that he understood how some people could make one bad decision, or act in an uncharacteristically bad way. For people such as these, RJ was beneficial. There were also people (he didn't just say kids) who were hardened. For them, RJ is a minor inconvenience and they see it as an easy way out. In his words, "They aren't dealing with embarrassment because they aren't embarrassed about it." For them you need something "tougher" to make the point.

The major complaint of another corporate store manager was the lack of information from the programme. One incident that was recounted involved an adult who was caught in a situation the store manager believed was unlikely to be his first offence. He was observed by staff and then made several contradictory excuses. The police came and he was taken away. About six months later, the manager said, the

report came back that the offender had served his community hours and that he had completed his disposition. The manager complained, first, that there was no opportunity for the store to decide that that man should be charged and taken to court. It was not discussed with the store and the manager had no idea it would be handled that way. (This was not RJ but probably Adult Diversion).The general point was that the store should be given the discretion how to proceed. In that case, they would have wanted him charged because they believed that it was not his first time stealing, only the first time he got caught. By not going to court, the man's name was not made public so other retailers would not know to look out for him. The second complaint was the absence of feedback until the very end. This diversion from court smacked of favouritism, the manager concluded, because the thief was well known in the community, and was a frequent volunteer for other groups. On the other hand, a case that came to mind that should have gone to RJ was clearly a first offence, done under peer pressure. The offender broke down in tears in the office and was clearly both afraid and ashamed.

The majority of managers were not satisfied with the system. Over the year, one manager indicated, he had seen no dramatic change, no great break-throughs or benefits. Behind the scenes, he suggested, there may be a success story or two, but "from what I see, the system has too many loopholes; it's too easy to go through and not have it mean anything.

Another store manager said, bluntly, that he was not satisfied at all by the system, including AM, RJ, adult diversion, and CSOs. Court was the only answer. Anyone who goes through any of the alternatives has no incentive not to be a repeat offender. Everything is done secretly and is never publicly known. "It has gotten to be a routine. They shoplift and then all they have to do is write a letter of apology. He compared it to being "like a Catholic in confession. You say you're sorry and then your sin is forgiven and you can go out and sin again."

This manager said that the store did receive feedback from the police when they decide to divert an offence. The one case that he had during the year, he said, he was not satisfied when he heard it was being diverted. "I could have appealed it, but I decided not to bother because I don't think it would have done any good. If they had come to me in advance and asked about diversion, I would have said `no'". It was the policy of his store not to send a "victim" representative because of the time and money, but also because he did not believe in that system. What is worse, he thought, was that it used to be only for youth but now it was being expanded to include adults.

While generally, as noted above, corporate managers do not attend, one manager did personally attend a session – because of the timing, he said he wasn't busy at the time, as well as out of "curiosity". He didn't believe in the system, he said, because "I've seen too many repeat offenders". In that one case, though, he came away with a more positive feeling than he expected. He said that he learned about the background of the kid, saw the parents and came to believe they were sincerely dong the best they could, and realized that "the programme was not as bad as I had at first thought it was". However, he continued, that case was the exception. He was impressed with the kid's

responsibility and particularly with how the parents were responding. He didn't think that most cases of Y0 theft, though, would be like that. "In most cases, it is an easy way not to tie up the court's time. That might be OK it its place", he said, though he didn't "know that". Maybe the courts were busy. But generally, he said, diversion did not have any positive benefits and it would be better to send them to court. He said that another store manager went to an RJ hearing and, while he did no know the details, came back negatively saying that the whole thing was a farce, that the Y0 just played a part, said the right things, but he had no sense that it was in any way meaningful or would make a difference. "He did not have the same sense of family involvement that I had".

PART V

Interviews with Justice System Panel

1. Victim Supporters

Among victim supporters in the panel were respondents working in the criminal justice system as victim supporters, as well as community members who are active in the women's shelter movement. The perspectives of this set tended to be quite similar. People working in the victim-oriented parts of the system typically also see RJ as a limited programme that is good in its place but would need to be different if it were applied to more serious offenders or offences. One of the issues raised by a Victim Services agency worker was the degree of contact between themselves and the local RJ agency. The RJ agency does, however, send a monthly report to Victims' Services (VS) indicating the victims RJ is involved with and asking for feedback on any the VS has in their caseload.

Victims were often reluctant to take part in RJ. The respondent recalled a significant case over the last year involving a female YO involved in a home invasion. The female YO (one of three accused) was sent to court and sentenced to incarceration. She let it be known through the Youth Centre and thence to VRJ that she wanted to apologise to the victim, a 90-year old man who spent a long time after the attack in intensive care and surprisingly pulled through. An RJ caseworker contacted the VS caseworker contacted the family (with whom she had had extensive contact already) and was not surprised to learn that they wanted nothing to do with the YO. She communicated this back to VRJ, learning that the RJ caseworker planned to let the situation cool a bit and then re-contact the victim. That was several months ago, she said, and there had been no feedback from RJ about whether they had contacted the victim and what the results of it were.

This raised the general issue of the relationship between RJ and other components of the system. One woman complained that there was very little contact between the RJ agency and the other parts of the system. She had participated in the original Advisory Group in her area, which had fallen into disuse. She didn't know whether reviving that was the best solution to the problem of communication; certainly "annual meetings would be worse than useless". In her view, a new programme had been set up and no one seemed to be giving it any advice. The programme seemed to be operating without a great deal of supervision. "It seems to be so separate", she said, adding that she may be wrong in her perceptions. It would seem that RJ presented a perfect opportunity for the system to work together "from the get go", but that this had not happened.

One major concern with higher end RJ was with the experience and training of the volunteers who would be expected to work with seriously disturbed kids. Having worked with volunteers extensively, and knowing their value, she still questioned how good it is to use volunteers in such cases because they are not accountable, and they did

not have the necessary professional qualifications. "People have to work for years to obtain qualification in this area and it is not available through simple training sessions. You can have all the training you want and you still won't have the expertise to work with these complex cases". So the thought of moving into sexual assault, or child-related family issues "gives me the heebie jeebies. There are lots of really dangerous things that can happen, not just physical safety but mental health safety." "Every complex problem has a simplistic answer, and it is usually wrong". Higher end or multiple offenders have a host of personal, family, and psychological troubles that have to be dealt with professionally.

One of the problems with RJ was the degree to which it depended on the discretion of individual police officers who "bring their own personal agendas" into their work when they exercise their discretion.

A woman associated with women's shelters noted that in addition to the main concern about safety, there was also an issue around coercion. Her experience was that women who, it was claimed, had volunteered to enter a mediation programme with their spousal abusers were often pressured into it by their former partners or other authority figures, such as judges. "They don' take note that the woman is not comfortable in that kind of forum with the accused." According to one women's shelter worker, a study of mediation involving women and their abusive partners resulted in a successful lobbying effort to make the government realize that mediation should not be used where abuse is or has been an issue, that it is "untenable" in that situation. "Several steps beyond that" initial contact, the government has set up a screening tool "to screen women out of mediation immediately if there is an abuse issue."

Despite these concerns, a women's shelter worker said that an initiative was currently underway in Nova Scotia, involving a co-ordinated inter-agency approach, to hold focus groups with sexual assault victims, women who were abused in sexual relationships, and a third group of women in conflict with the law (through EFRY and Coverdale) to discuss whether and in what way RJ could be beneficial with these women. She said the Department of Justice was planning to discuss the same issues with groups of men. It was unclear, she said, how some form of RJ could address women's issues, systemic inequalities, and the serious safety issues mediation has always raised. Some of these focus groups were being arranged by Women's Shelter Societies with the intention of giving women who were victims a say in how (or if) RJ or something like it might be applied, and what protections need to be in place to make the programme work. Another respondent noted that they were having some difficulty getting formerly abused women to attend these focus groups because RJ had not penetrated very far, "it had not trickled down to the women we serve yet".

In one woman's view, the system smacked of serious financial downloading from the government onto non-paid volunteers. That was OK when RJ uses volunteers for lower-end offences: "I'm not opposed to the idea or RJ; the adversarial system certainly doesn't work". But higher-end cases still should not be sent to RJ, because professional expertise was necessary. She doesn't want the process to get abused by the offender; in fact, she said, the offender abuses the system now. It seems to be set up for

the offender, "their needs and regrets". In the case of "that YO who wanted to apologise to the 90-year-old victim -- whose needs was the apology meant to satisfy? Not the victim's."

One other major case a respondent recalled involved several victims in one county and a YO. The system led to a great deal of victim confusion. At first, the YO was charged by the police – so it was going to court. Then the Crown decided to refer it, so it wasn't going to court. The victim attended the RJ session and participated in deciding upon a disposition for the YO. Then, however, the YO did not complete, the case went back to court, and the victim was contacted again, having thought the matter had been dealt with. So the victim was taken on a "roller coaster ride" on that case.

One women's shelter worker said that she felt her thinking may be changing on RJ. She had not been initially opposed to RJ as a concept, and was "even less so now", although she was still worried about its application to vulnerable women. She still felt very cautious about using RJ as well as Conditional Sentencing around crimes of violence, "but I'm even doubting myself on that!" The main difference came from looking at things from the perspective of women in conflict with the law (through her EFRY contact). In those cases, "you can't quickly dismiss RJ". RJ may be a measure that can help, and be appropriate for, women in conflict with the law. "Lots of women are incarcerated because of retaliation. How do you do this without creating a double standard, if it is OK for women offenders to go through RJ, but it is not appropriate for men to go through it?"

A major concern of some women supporters continued to be the problem they have with volunteers. Using volunteers to administer RJ was potentially dangerous. "Volunteers often have different motivations and a different skill set" [she did not agree that it was an "inadequate" skill set]. Their understanding of the dynamics was not well developed – "how could it be? – as that of the front-line workers" such as workers in women's shelters. "It would be remarkable if they did."

One respondent concluded, if a programme is worth delivering, it is worth funding properly. "If you don't have it, don't do it." "There are lots of ways for really good volunteers to perform valuable functions for the community without giving them these huge responsibilities for a pioneering programme. It just doesn't make any sense."

Finally, speaking about the absence of visibility (referred to as the RJ Black Box), one respondent suggested that the best procedure would be to videotape the session and then analyse it.

2. Police

Interviews were held with municipal and RCMP police in several communities and detachments. The police tended to maintain their general attitude towards the programme, seeing court as the more serious option. One comment was telling: "the officers are open to it, under the right circumstances". These circumstances tend to be quite circumscribed and usually not beyond the AM template. As one office said, "Our guys know that ordinary people screw up once in a while. They're professional enough to acknowledge that it is an isolated event and likely won't happen again." These meet

the criteria for RJ. Attitudes are shared among officers in the detachment/department. An officer commented that he had heard a few negatives from other officers who had gone to RJ hearings. More specifically, one officer returned from a hearing involving a drug offence in which the offender had to write a letter against drugs. "A waste of time" the officer commented.

With respect to extending RJ to higher-order offences, there was some evidence from the municipal police level that attitudes had not changed in general. For example, one officer noted that he had a problem with allowing B&Es to go through RJ. The "decision to let someone not be charged" when the "sanctity of their home had been violated, when someone had gone through their personal things, even their underwear". B&E was a "personal victimization". For the officer on the street, to suggest RJ would "diminish for the victim the seriousness of the offence". It might go to RJ, "but what message does this send to the victim"? Another officer did not think that RJ should go to the next level (more serious offences/offenders) without knowing how the first level worked. "How can you trust the process and then jack it up when you are still waiting for the statistical results of the first phase?" "How can I convince my officers that this works, in the first place, and on top of that try to expand it?" Officers need to be convinced that the programme will change an offender before they will support it.

On more serious crime or offenders, one police response was "No, no, no." This was qualified by saying that the programme should not be extended further without first proving that the system works for the less serious offenders, a point they were not convinced about (and claimed that they derived from reading the Executive Summary). On the one hand, an officer argued that if the school, social services, and the family haven't fixed the kid, "what is a one-hour RJ meeting going to do?"

On the other hand, this same officer held out a potential olive branch, suggesting there may be some potential for RJ in more serious cases. The difference would come if "RJ opens up the opportunity of offering other services." The serious offender needs a variety of programming. "The RJ system has to be able to expand to offer these kinds of more intensive intervention. It is only part of a much bigger process. Then you could say, if he goes to court he'll just get a fine, but if he goes to RJ, he'll get intensive help. They'll send him to anger management or something like that. The court can't send someone directly to anger management, but RJ may be able to facilitate this."

If one police tendency was to define certain offences as outside the pale and unsuitable for RJ, another police response was to view RJ as increasing an officer's discretionary options. In the view of an officer who was trained and experienced in the use of the CJF, while certain things should almost never go to RJ, most decisions should be made on a case-by-case basis. One case of possession was referred; "the Y0 brought his parent to the session, but she was stoned! The son had obtained the drugs from his mother in the first place". That was not an appropriate case to bring. The key would be to consider the best way to stop the problem, "make everyone happy, and have a meaningful resolution." Some of the guidelines an officer could use would be whether the Y0 needed counselling (which could be obtained through court but not RJ), whether

the value of restitution was too high (e.g., indictable property damage, over $5000). If it were something like assault causing, the officer said, it should be discussed with other RJ co-ordinators elsewhere before deciding to refer it. So even causing a serious injury to someone was "not always inappropriate". When there were multiple victims, on the other hand, such as in a window-breaking spree or breaking into a number of autos at one time, there were so any victims that it would probably not be feasible to hold an RJ session. That officer had heard of an RJ session that went for two days! "That was way beyond the limited attention span of most Y0s", she concluded.

There was also some openness about sending adults to RJ under the right circumstances. The police tend to generalize from concrete cases. On this issue, the officer referred to a long-term employee of a town business (and "friend" of the owner) who was caught with his hand in the till. The owner wanted to fire him but was hesitant about taking him to court. Finally, the offender admitted it; he went to adult diversion, which meant he accepted responsibility (so he could be fired), but wouldn't have a criminal record. It should be noted that suggesting that such an offence be handled through RJ contradicts the comment made by a member of the Community Panel that violations of trust such as these should go to court.

RJ might be more beneficial for adults than adult diversion because the latter is just one-on-one with the probation officer while RJ involves a more extensive meeting with the victim, etc. Several officers had a few snide remarks to make about the number of breaches they get and the job that probation is doing. An RCMP member commented that some adults who might be RJ candidates go to Adult Diversion, "but they don't really need that." AD is a "good program" but it is "much too heavy for some adult offenders" especially those who are first offenders or who have committed minor crimes – again indicating a tendency to narrow the RJ programme in one respect even while expanding it to adults.

One of the main issues of concern to the RCMP was the dual streams of community-based RJ and the RCMP Community Justice Forums (CJF). One member would have liked to see more recommendations about what to do with the two parallel streams because that is a main issue and is very confusing. At first there was lots of confusion about the provincial RJ programme in the RCMP and its relationship to the CJF. According to one member, the RCMP policy is to use a CJF if RJ is appropriate, but they are trying to come up with some agreement that the community-based RJ agency will do the CJFs, using their own facilitators. Another RCMP officer, who had done CJFs in two areas, was disappointed that the RCMP protocol was now to refer any case of RJ to the community agency rather than have it handled in-house. This officer felt that the CJF offered more confidentiality, which was especially important in a small town. It also gave the officer control over the forum. In addition, the CJF, done right, can be more beneficial. The VRJ, for example, does not do the process correctly, the officer said. It should end with a little food and some genuine reconciliation in an informal setting rather than simply have people leave. That does not promote healing. The "true model" is a healing circle. "The resolution has come. It is important that everyone goes out with a good feeling." This officer was critical of the way the local RJ

agency cuts the "important part" out. Leaving it in a CJF gives the officer control over how the process works.

The chief disadvantage of the CJF was the cost in member's time since all the co-ordination had to be done by the member as well as running the session itself. Another officer commented, though, that the time it takes to arrange and facilitate a session is no worse than the time to prepare a case for court. This is not the situation in all detachments. In some detachments, the RCMP has a reliable facilitator to whom CJF's are directed. In this case, the officer's responsibility is the same as under RJ: to attend the meeting. This is equivalent to court, although one member commented, "It is more personal and easier to go to the hearing than sit waiting in court."

It was also noted that an officer is paid overtime for sitting in court, but does not receive overtime for attending an RJ session if it is held during normal time off. This implies that the RJ is a soft option and that it is not as important. The officer was looking into having the protocol changed on this issue.

The advantage of the CJF was that you could do adults, and the victim HAD to be there. "You have to have some input from the victim for it to be real RJ." On the other hand, victims can't expect to get all they wanted. For example, one member attended an RJ session where the victim, a businessman, wanted the offender to stand outside the store and wear a sign around her neck for one half hour indicating that she was a thief. The member said during the session that he did not agree with this: "It was like cutting off someone's hand. The agreement shouldn't include this kind of humiliation".

When asked what the benefits of RJ are for the offenders, an RCMP member commented that it gives them "a chance to have a say other than through the voice of a lawyer. Some offenders like to talk. It is like being able to make an offender statement other than merely on file. It gives them a chance, after reflection, to think about what they did. There is no intermediary like a lawyer, so they can't think they don't have to be there." The offender can also come to realize "what a great cost even this simple hearing is." The member didn't know of any minuses for the offender: "it seems set up to be beneficial for the offender."

With respect to the victim, a member commented: "It is positive that it is one on one. The victim would at least be there to see and hear even if some don't want to speak. The victim sees something being done, that a minor offence is still important to people. It gives peace of mind. It also gives the victim a chance to reflect and see the offender as a `normal' person, rather than as that drunk who smashed my window. The offender also sees the victim as a person – both flip over, seeing each other as persons. It works great both ways."

The police support the idea of a victim veto. A negative point about RJ, an RCMP member stated, is going ahead with it with no input from the victim. "I don't believe in that. The veto should be there. If the victim feels strongly about it, it shouldn't go ahead. In the CJF, if the victim doesn't participate, there is no CJF." Another officer reiterated this point. That members' approach was to talk to the victim and "educate them" about RJ. Such a meeting could last an hour. But they would still have a choice whether they

want to proceed with charges. VRJ will proceed without the victim, or with the victim but only by really talking the victim into attending against the better judgement of the victim. "I'm not comfortable with that".

Concern about the professionalism and ability of volunteers to handle relatively more complex cases was a frequent theme among several panel groups, including the police, victim support organizations, and even corrections. This issue was particularly important when considering sexual assault and spousal violence cases. One RCMP member stated that such case should not be referred, "Absolutely not. There are no minor sexual assaults." He doubted whether the facilitator would be able to handle the issues that would come up in a case of either sexual assault or spousal violence. In fact, the problem in both would be that the facilitator would not be able to handle them. "Too many things can happen in these types of cases and RJ is just not set up to handle them. Both parties in these disputes need legal advice and offenders in both cases have a very high probability of repeating the offence."

Another officer commented that, through that member's experiences, the volunteers were not only well trained and committed, but that they fulfilled an essential role in RJ. They were usually older women and at home. They were the "heart" of the system and brought a genuine community focus to the process. "It brings a whole other voice to the table." This officer claimed to "see RJ in a whole other way", as "bridging the gap between the police and kids." A kid "may have to face the music, but maybe his older brother and sister have already been pegged as criminals. Charging a kid like that is not doing anybody any favours. It is better to make that kid an ally. If a kid is badly acting out, they're probably abused at home. Maybe if the officer takes a personal interest, the next time something is happening to the kid he will call 911.You have to do something to get in there, not just lay a charge. You have to show that the behaviour was bad, but not the person."

3. Defence Lawyers

At least from the point of view of some police officers, RJ is different now because defence lawyers are getting involved and see it as an opportunity for their clients, though their dealing is mostly with the Crown not the police.

One private defence lawyer handled about a dozen Y0 files a year. In the view of this respondent, many veteran police officers were using their discretion appropriately and referring cases to RJ – it wasn't just the younger officers who were doing this. The more open-minded police were actually having their own "little sessions" with offenders. These were informal – the lawyer said that he attended as a community member and not as a lawyer – but still resulted in the Y0 having to do something to make amends.

RJ was "catching on" in that county as more people in the system became aware of it. Even the Crown was coming around, he said. In the lawyer's view, once the matter had been raised for one Y0, being even-handed meant that it should be handled in a similar way for other Y0s – [the principle of fairness modified the otherwise hard-nosed

approach some Crowns would prefer to take]. In other words, it was becoming more a part of the system.

RJ is now being openly discussed in court, one lawyer said. It used to be that a charge was laid and then, on the plea date, a joint submission from the Defence and the Crown would come forward asking for a 60-day adjournment before a plea was entered. This was code for having the case sent over to AM. Very rarely would they come back to court – almost all of them were being dealt with successfully. Now the question of whether RJ was appropriate in a case could be openly spoken of in court. "We do say that it is for RJ and make it clear to the judge." Apparently, this is not something that is raised by the judge but by the two lawyers in collusion.

The lawyers tended to see RJ as workable at relatively higher ends of the system – that is, at the pre-charge level – more often than respondents in the other system positions. One lawyer believed that it was a mistake to exclude domestic assault (although this would imply moving RJ to adults).Not referring adult domestics is actual policy. But "where we are now, referring them may not be a bad thing." Police policy is to remove the man from the house and seek to remand him. But what about the situation that begins in an argument and then escalates into a fight where both parties are involved? Police policy (not mere discretion) assumes that the offender is the man and the victim is the woman. That is not always the case." It has to be a victim and an offender, and you can't drag the victim into RJ. It almost eliminates them as an equal person."

In general, this respondent advocated including adults. For lots of people their main fear is being confronted by their victim, having to admit publicly and openly that they have done something wrong.

One lawyer suggested that you would have to consider repeat offenders carefully, case-by-case, and they may not be good candidates, but they should not be excluded automatically. For example, RJ may be in the victim's best interests and it would be wrong to exclude them from an RJ process merely on the grounds that the offender was a repeater.

4. Crown Attorneys

There had been many reservations about RJ from the point of view of the police-Crown relations. In the view of one RCMP member, one negative aspect of RJ was "the police officers being told that they had to do something." He didn't like the idea that the Crown could send the file back. "Officers know offenders and know that some things should not go to RJ although on paper maybe it looks like they should. So the impression was that the officer could write all the comments he wanted on the Crown Sheet about why he was laying charges, but the Crown will still send it if he wants to."

There is evidence that the Crown is intervening more in shaping policy in police departments. One prosecutor said that, last year, they became more vigilant insisting that police consider RJ. Last summer there was still a large problem getting RJ checklists from the police. "I tried writing `nice' letters, urging them to complete the check list and telling them that they `had to' complete them. They had no measurable effect. So, on

September the first I wrote and told them that anything they submitted for prosecution without a checklist would result in the withdrawal of charges. Now I usually always get an RJ checklist." Earlier, a police officer had referred to this, commenting that, "The Crown is taking a greater interest than before." A memo from the Crown Attorney dated 18 July 2001 complaining that RJ had been in place 2 years and the police still weren't doing it right, and demanding (in bold capitals, "NO CHECK LIST. NO PROSECUTION". Accordingly, the police in that jurisdiction were filling out the check sheets more faithfully. According to one RCMP member, this memo had the desired effect: the checklists were being completed. "The only ones that are coming back now are older ones".

Overall a prosecutor commented, there is not much qualitative change in RJ, only quantitative change in that it has spread from the four areas to the entire province.

The Crown-level has been identified as crucial in moving RJ from the limited implementation to a more robust programme involving a greater variety of offenders and offences. From statistical figures one prosecutor saw from last year, about 20% of referrals were from the Crown and 80% from the police in his area. In his view, he doesn't think they should be higher than this. "Frankly, I don't believe they should be as high as 20%."The referral should be coming from the police. Only if there is a mistake, or something has changed in the meantime, such as the attitude of the offender, should the Crown refer. Sometimes the scenario is like this, he said: a kid gets taken in for questioning, is read the warning, and asks to speak to a lawyer. The duty lawyer advises him to remain silent, so he doesn't answer any questions. The police conclude that he is not taking responsibility, "and, in fact, he's not". Then, "later, he talks to a legal aid lawyer and does accept responsibility. That is the kind of file that might end up as a Crown referral, but it doesn't have to, if the police follow it through before laying an information."

A prosecutor was concerned that it would not be good for the Crown to refer more cases because, if the police get used to the Crown referring, they will simply pass the buck and leave it to the Crown. They will escape the heat for making the referral. For example, kids in a small town in his jurisdiction did considerable damage in a cemetery. The value of the damage was high, and the victims were irate, considering where the damage was done. The police, facing these victims and considering the value of the property destroyed, did not want it referred and laid charges. It ended up being a Crown referral, and at that point the police were in agreement with it. The prosecutor concluded that the police were unwilling to refer in the face of intransigent victims and therefore put the burden on the shoulders of the Crown, who then had the responsibility of making the referral. While this should be the exception, it has the potential for becoming the norm, something the Crown saw as a problem. It could be argued, though, that it is exactly why the Crown also has discretion to refer, particularly in a situation where the police are reluctant to expand the variety and types of cases they refer. It might also be speculated that, especially in a more rural area, where the relationship between the Crown and the cops is relatively close and personal, it is

unlikely that the police will adopt a "let the Crown do it" attitude against the wishes of the Crown because it would impact on other work they do together.

The major sign of qualitative change in the system is that, as one prosecutor commented, "we hardly ever see shoplifting cases any more", although whether this was because the police were referring them to RJ or were using Cautions, he did not know.

On adults, one Crown Attorney commented: "There are big dividends to be had by getting adults into RJ". They were deemed at least as good candidates as Y0s. While some adults are certainly mired in criminality, so are some Y0s. "You can see some kids who when they become adults will be mired in criminality; I've prosecuted their parents before them". The number one impediment for these kids is their attitude, the main reason indicated on the police checklist ("didn't take responsibility, terrible attitude"). "But lots of adults get charged who don't have that attitude at all and they would be just as good candidates, perhaps better candidates, for RJ."

One prosecutor said that there was no such thing as a "Crown point of view" on RJ. There were only individual differences. There are people who can "see the big picture of RJ at all levels of the system", Crowns and the police. It is an individual question, not a question of a person's role in the CJS. One prosecutor commented directly on the Executive Summary prepared by Don Clairmont, saying that he had attended Crown training sessions and that the viewpoint that was represented in that document (Executive Summary) was representative only of the Crowns in Halifax, but not of the viewpoints of Crowns elsewhere in the province. "Of all the Crown Attorney offices we deal with, only the Halifax Crown Attorneys have an overwhelmingly negative attitude about RJ."

5. Judiciary

Judges were contacted from Family and Provincial Court. One judge said that he still felt the same as he did a year ago, that the idea was a good one. He detailed his participation in an RJ pre-sentence "forum" playing a community representative and not a judge. The case involved property damage. The youth had damaged some property at an office intentionally, but thoughtlessly with no specific intention directed at the owner of the office. However, the judge said, the woman who rented that office took the offence very personally and then had installed, at her office and her home, at her own expense, costly security systems. At the RJ meeting, it was made clear to the Y0 the consequences of his action, which he did not intend and of which he was unaware. This direct victim did not see it that way and did not want to come to the forum. The owner of the building, however, did come. The point of the story, though, was that the judge felt that the process worked exceptionally well. "It was a good group of people, and from the way the young person reacted, it had an impression." The youth had, he said, expected a period of incarceration and the group recommended this (probably as part of a Pre Disposition Report). "The [sentencing] judge saw fit to deal with him more leniently." The respondent, part of the pre-sentence forum, found that he was more

lenient in his response than he had initially expected to be. He found, for example, that the police were "fair but firm" at the forum. In particular, he said, he came away from that meeting with a sense that justice had been served and that the outcome was very positive. "I felt that I had done something positive for the justice system, for the community, and for the offender." It was a different experience from a court case where a lawyer speaks for the accused, and says "My client is very sorry, your honour." Similarly, he added that a CSO had to be a more meaningful disposition than simply probation.

RJ does come up in court occasionally. The practice used to be that the Defence would ask to have the matter set over before a plea for three months (post-charge) and the matter would go to RJ. The charge would be withdrawn later after completion. "This happens more often now." Usually this is a matter that is discussed behind the scene by defence and Crown and does not come out openly in Court. The matter of RJ also comes up in PDRs where, for example, it might be said by way of information that a different charge was handled through RJ. "They get it in here. It is not a big thing, just part of the offender's history." This judge said that he had not raised the question of whether RJ was appropriate in court. One police officer related the case of another judge who, in court, asked why a particular Y0 offence had not gone to RJ. It was explained that the issue wasn't the offence (minor trafficking) but that the offender did not admit guilt or show remorse.

6. Corrections

Panel members in corrections who were contacted included respondents in parole, probation, and institutional corrections. The activity that occurs at the post-sentence stage is relatively limited in number but requires intensive effort. With respect, particularly, to post-sentence RJ, the quantitative measure of the programme (number of cases referred) pales in significance besides the qualitative aspects. Each referral involves a considerable amount of time and effort on the part of many parts of the system, including Youth Corrections, the local RJ agency, and the local probation office which will be involved in the initial assessment.

The main thing that appears to be spurring more involvement of corrections in RJ are (1) the new YCJA that includes a major focus on reintegration and time served in the community. This means that corrections staff have to form relationships with RJ agencies (because RJ forums may be a piece of the reintegrative puzzle for some offenders) and Probation, which will supervise the community time of the sentence. (2) The fact that the programme has gone from four pilot areas to the whole province. Now it is not a question of where an offender is from and whether he or she has access to RJ, but it is equally available for all. (3) Out of the recent meeting between corrections and RJ agency people, a committee has been struck to develop policies and protocols for reintegration and RJ. The result is that, in the Youth Centre, staff members are coming forward with some potential referrals, and the liaison with the local RJ agency (and others) is being enhanced.

Above all, one official indicated, there was a need for a successful outcome: "we need a success story to build on". Two RJ cases were well along the preparatory stages. One involved a serious assault and the other a case of home invasion.

In the Youth Centre, the referral originates with a caseworker in the institution who makes the initial contacts, calls the Probation Office in the home community, and assesses the chances for a successful meeting. Once the details are worked out, the caseworker passes the file to the supervisor who has the final say on referral. As part of the eventual protocol (and informally prior to that), the local RJ agency caseworker may get involved in the screening process to provide further input into the chances that the meeting will be a success and will be beneficial for the offender as well as the community. Agency caseworkers travel to the Youth Centre (sometimes more than once) to interview potential offenders and make arrangements for the community forum.

This contact is often crucial because the perspective of the Youth Centre and the Agency can be "3000 miles apart". "We see the kid who has gone through every programme we have here, who has national lifeguard certification, is prepared to go into grade twelve, and is ready for release. The agency sees the kid who terrorized the community and is about to be released back into it again. So we need to get grounded on what the kid did to be sent here in the first place. Both sides have something to learn."

One Youth Centre official believed that RJ had "huge potential benefits" when it becomes part of the reintegrative programme under the new Youth Criminal Justice Act. "The youth is coming back to the community sooner or later; a reintegrative meeting helps prepare the community for the release. It is an attempt to change the kid's returning home. He may have been sentenced to eight month, but that passes in a heartbeat. He's back and walking the streets before you know it." So an RJ forum held one month before his release will help prepare the kid and give notice to the community that he is being released so that it will not come as a surprise.

A lot of victims live in fear of the offender returning, even though it was usually a spur of the moment crime, not aimed at them specifically. That is not the way they perceive it, though, so the victim has a lot to gain, usually, by attending a forum.

The greatest variation in responses to RJ at the post-conviction stage appeared to be among probation officers. As we had explored in the Year One report, some probation officers resisted RJ on a number of grounds, reflecting an institutional prerogative. One of the ambiguities in this perspective was the tendency for some probation officers to complain about case loads at the same time that they complained that RJ was siphoning off the less serious cases, presumably affecting their caseload numbers positively. The concerns, however, were about professionalism, the voluntary nature of the RJ programme, and the perception that government down-loading was behind the programme.

Looking at corrections more widely, an official suggested that referrals to RJ from corrections may increase because they were now more generally aware that breaches of probation orders can be dealt with through RJ rather than sending the

offender back to the institution. One probation officer, for example, said that his agency was "very active over the last year" with RJ referrals and that they maintain "excellent relations" with the local RJ agency. Between 10 and a dozen cases had been referred the previous year. Some, but not all of these, involved breaches. During the fall of 2001, the two agencies (probation and RJ) began a practice where representatives from the two agencies would meet and discuss Y0 referrals with respect to their suitability for being handed over to RJ. In fact, since RJ already supervises court-ordered CSOs, and community service is a common outcome from an RJ hearing, the argument was that many Y0 cases, post-conviction, could be handled through a hearing (accountability or mediation if possible), develop a disposition agreement, and then have this agreement supervised by the RJ agency. It would be returned to probation only if there was a failure to comply. In that agency, the probation officer said that he would attend the hearing and suggest input into the agreement.

As noted, one area of contact between Probation and the RJ agencies is that local RJ agencies do their CSOs. As one probation officer stated, they did "a reasonably good job" with them. In fact, from the point of view of probation, this was ideal because sending a CSO case to RJ was something handled by the secretary, so it did not involve the time of the probation officer.

One problem has been that probation – corrections in general – has referred very few cases. This was not true in every jurisdiction, as noted above. From one of the probation offices contacted for this research, however, there were no referrals during the previous year. One probation officer said that he did not see the absence of referrals from corrections as a problem, although others apparently did. The lack of referrals was seen by this respondent as an "ideological" problem or difference. The problem is the referral criteria. RJ wants voluntary referrals. "They want kids to come to them and say `I messed up.' The whole approach is not to rehabilitate the kid but to make things better for the community. This voluntary principle is the reason they don't get referrals. Our cases contain very few kids who feel remorse, accept responsibility, and want to make amends for their actions. There are almost no voluntary cases left on our provincial case load."

Probation classifies Y0s on the basis of a combination of needs and risk into Maximum, Medium, and Minimum cases. Prior to RJ, about one third of cases were "Minimum" and half of those would be "natural minimums" – the ones currently being referred to RJ by the police, bypassing Corrections. The other type of "minimum" would be Y0s who began as medium or minimum and made progress, being reclassified over time. Post-RJ, the total minimum classification is down to 15-20% "because RJ referrals from the police have been effective in siphoning off the minimum offenders". These are the kinds of kids who end up in RJ, so RJ "gets the idea that offenders are like them! Therefore, why isn't Probation sending more Y0s?"

A typical minimum case, he said, would be a serious offence, such as assault causing, "involving basically a good kid who made a mistake in the heat of the moment." The kid would be a "natural minimum, a good candidate for RJ, but the offence means it goes to court". The probation officer in that county who specifically

handled Y0s, had a case load of 65-70 in addition to about 30-35 mentally ill clients "who have been abandoned by mental health". On the case load of this PO were about 15-20% who were classified as minimums, of which maybe 5% were "naturals". That 5% could, reasonably, be referred to RJ. Practically, though, that PO would deal on a daily basis with threatened suicides, violations, irate parents, kids who don't have homes, and so on. Daily crises take all her attention during her 8-hour working period. Consequently it is difficult to "tease out a voluntary minimum for referral to RJ."

A second issue involving caseloads was mentioned by a probation officer. In his view, the provincial crime rate is coming down. Two or three years ago probation would handle 6200 cases; now it is more like 5700 or 5800. That is a "significant drop". The adult rate is being kept fairly high because of the criminalization of family violence and impaired driving. But Y0 rates are coming down. However, the change in numbers is not consistent across the province. Where there is in-migration – Metro, Colchester, Pictou – the numbers remain high. The point was that, in declining areas, it is possible for P0s to "tease out" the minimums and refer them; but it is practically very difficult in busy offices. As the respondent pointed out, very little time is spent with minimum offenders anyway, so considering an RJ referral would mean spending time with a kid who doesn't need it and take time away from those with higher risks and needs. A further justification was raised: "basic correctional research from the `what works' people says that you don't intervene with minimum risk kids because the more official intervention there is, the greater the likelihood they will get worse." Therefore, the point was, they are better off with the minimal processing they get through probation than going through RJ. It was a net-widening type of argument, in which going to RJ instead of probation widens the net. One problem with RJ, the probation office reiterated, was that it is focussed on repairing harm to the community, and not putting the interests of the offender first (rehabilitation).

One solution to this dilemma of referrals (in his view a "perceived dilemma") would be to handle YO probation orders the same way they handle CSOs. Secretaries do the paper work to have a CSO sent over to RJ. Similarly, on intake, the secretary could simply refer all Y0 cases to RJ. "That would get around the problem of voluntary intake." Then it would be up to the RJ agency to screen the referrals and send those back they think would not be appropriate. In the context in which this idea was raised, it appeared to be more of a wish not to cooperate – if you are going to take some, then you can take all of them. This would save the PO from a lot of work. For another probation officer, however, this idea was seen in a more positive light. It would be a cooperative exercise between probation and the RJ agency whereby some cases would switch streams out of probation and into RJ.

One proposal from a PO was that, in addition to not having probation determine voluntariness, to have a meeting between the RJ agency and the PO responsible for Y0s, perhaps once a month, to review cases and determine which, if any, were appropriate to go to RJ. In his view, a key point in this process would be to make it "simple and clean", to reduce the checklist questions to an essential three or four, "tombstone information" for example, and have the secretaries handle it as much as possible. "Let RJ take it from

there." At most there would be 10-15 intakes a month; maybe 3 or 4 of these might be minimums, and the PO would be able to identify these. Even a monthly meeting, however, was regarded as putting a strain on probation resources. Furthermore, he suggested, a PO would likely attend an RJ hearing, at a cost of her time (again, time spent on low-end offenders at the expense of the higher-end needier cases).

One of the most interesting points here was that a Probation Officer provided insights into how the RJ system could be assimilated into the existing CJS. In his view, the only difference between Probation and RJ caseworkers was training and experience. They are like probation officers, but at half the cost. The leap from what they are doing now into more serious cases was presented as not that great. He would like to see RJ agency expand its efforts in developing and delivering programming – anger management, cognitive skills, for example. Then probation could contract out that work to RJ. He said that RJ was already heading in that direction, running a programme in the local schools. Again, the direction of change would be to integrate RJ into the existing programmes (and philosophy) of probation.

From that point of view, the PO suggested that much of the probation caseload could be lightened at the same time that, under the new Youth CJ Act, the role of probation is changing. In particular, the federal government is expanding extensive supervision, increasing the effort per case. This will grow, "as a greater slice of the institutional population is handled in the community." Federal money was starting to come for this. His probation office, for example, was adding a position.

Again, though, while this PO had expressed some hostility towards RJ, directly and then indirectly by the context in which he suggested that every case be referred for them to classify, he sensed that the direction of change would involve probation in making more referrals or, at least, in more contact with other community agencies. The direction of change in probation, he suggested, was to draw a line that would mean keeping enforcement, supervision of orders and offenders in the hands of probation, "while consistently shifting the softer stuff out into the community." Probation would do primary case assessment, set up a case plan, etc. Some of their former work, though, would be farmed out to RJ. As caseloads come down, probation officers could then spend more time in programming than they do now. In the end, then, this probation officer seemed to think that there would be greater involvement between probation and RJ, despite his objections.